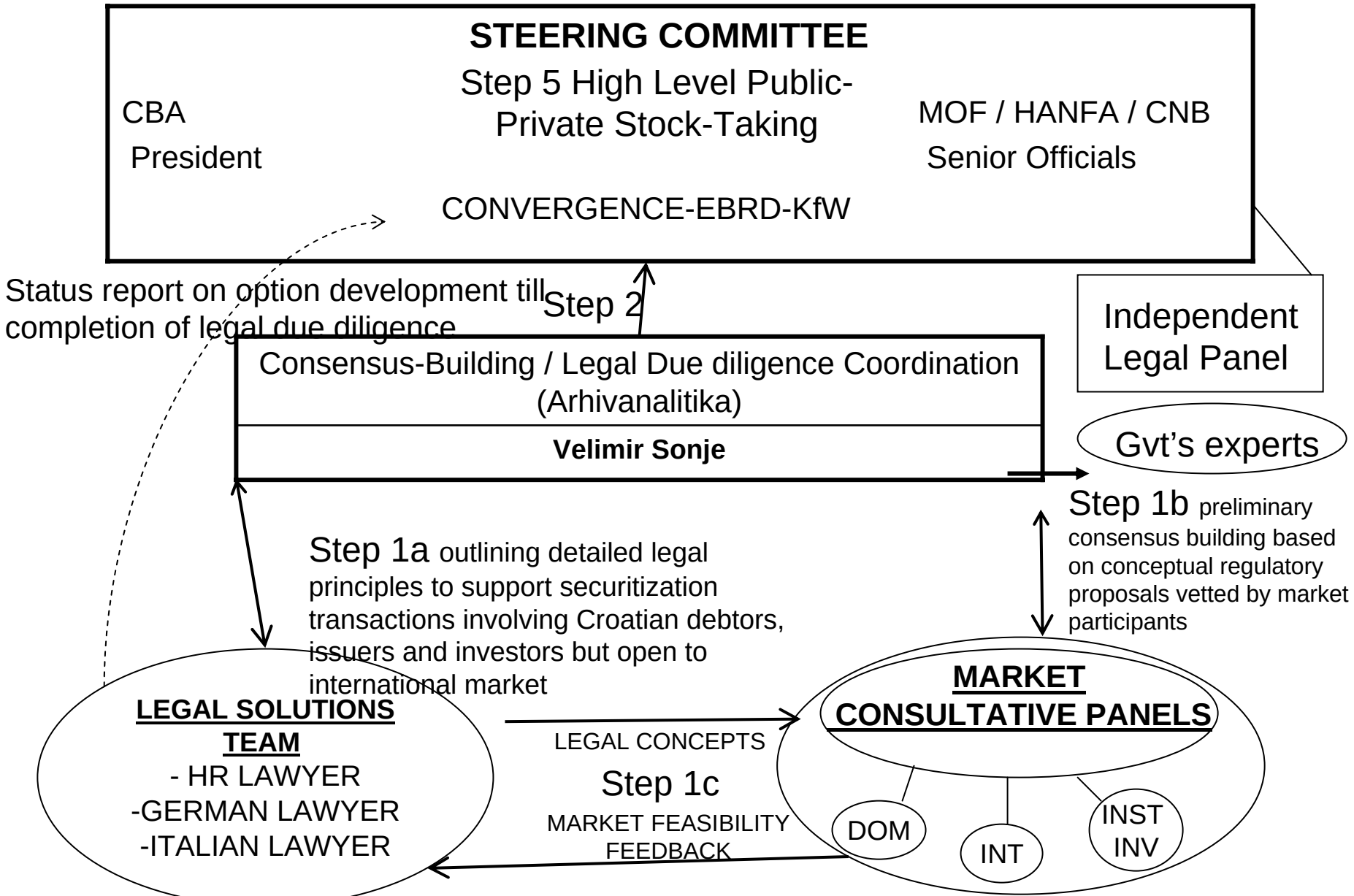
Croatian Securitization Project Development Structure



July 25, 2006

Croatia Securitization Project

Independent Legal Panel
To Ministry of Finance, HANFA and other authorities

Mr. Boris Porobija, Ms. Zeljka Rostas-Blazekovic

Context

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 Croatian assets (the Legal Solution Team). The intent is to use this market based assessment as an important input for the drafting of a securitization law. Following preliminary due diligence, the working group has evolved into a more articulated structure summarized in the Table in Annex.

To enhance the likelihood that this market-based legal exploration work be effective for policy purposes, the Ministry of Finance, HANFA and other authorities (collectively "Croatian Authorities" hereinafter) wish 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 is happy to support this request, in the broader context of its support of and involvement in the overall project jointly with the EBRD and KfW, by hiring up to two distinguished Croatian lawyers, designated by the authorities.

Project Scope

The Independent Legal Panel, consisting of up to two Croatian lawyers (the Lawyers), and namely Mr. Porobija and Ms. Rostas-Blazekovic, supported by an international lawyer made available by Convergence, will be responsible for reviewing the legal exploration work conducted by the Legal Solution Team and for making an independent opinion on their reports available to the Project Public-Private Steering Committee. The specific focus of the Independent Legal Panel shall be to determine the following: (a) the appropriateness of the overall direction of the due diligence work undertaken by the Legal Solution Team, (b) the practicality and constraints of the emerging options under existing Croatian legal and judiciary environment, (c) the alignment with international best practice and, in particular, with the need to ensure harmonization with EU legal instrumentalities.

Tasks

The Lawyers shall together be responsible for the following:

- to review and make written comments on the reports prepared from time to time by the Legal Solution Team and discuss them with members of the Legal Solution Team;
- to prepare written opinions as necessary for the consideration of the Public-Private Steering Committee;
- to assist the Public-Private Steering Committee in coming to a determination about preferred options and directions for further due diligence by the Legal Solution Team;
- to prepare for the Authorities a final opinion on the final report prepared by the Legal Solution Team. This opinion is intended to be an important input into the legislative actions that Authorities may take on the basis of the final report of the Legal Solutions Team

Governance, Reporting and Administrative Arrangements

The Lawyers will exercise their scientific activity in total independence. From an administrative point of view, they will report to the Head of Convergence. Their work contracts will be issued by the World Bank, the administrator of the Convergence program, according to its applicable guidelines.

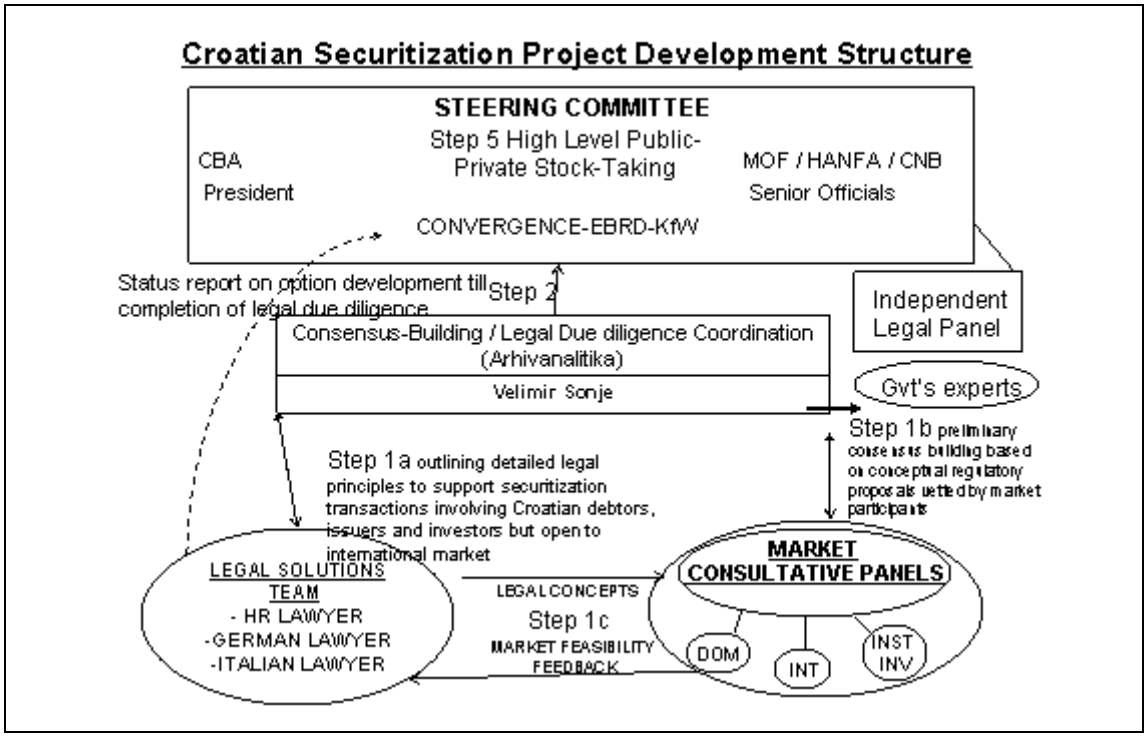
Activity Budget

The contract for each Lawyer is expected to be issued for each phases of the project, depending on needs as determined jointly by the Ministry of Finance and Convergence. Phase I consists of an opinion to be rendered to the Public-Private Steering Committee in preparation for its first meeting scheduled for August 30. For Phase I, Mr. Porobija and Ms. Rostas-Blazekovic will have a contract for 2 and 3 working days respectively, calculated on a Full Time Equivalent basis.

Background

Convergence is a World Bank-sponsored program with the mission to facilitate public-private cooperation in financial market-building activities, in partnership with other institutions. It is set up to assist the authorities and market participants in the SEE countries on the formulation of financial sector wide policies and promote active participation of major stakeholders in the identification and implementation of such policies.

By means of the Convergence platform, public and private sector, industry and consumer associations are supposed to maintain a transparent and effective policy dialogue and formal consultations on several issues pertaining to the development of financial sector in these countries.


Croatian Securitization Project Development Structure
STEERING COMMITTEE
Step 5 High Level Public-Private Stock-Taking
CBA President
MOF / HANFA / CNB Senior Officials
CONVERGENCE-EBRD-KfW
Status report on option development till completion of legal due diligence
Step 2
Consensus-Building / Legal Due diligence Coordination (Arhivanalitika)
Velimir Sonje
Independent Legal Panel
Gvt's experts
Step 1b preliminary consensus building based on conceptual regulatory proposals vetted by market participants
Step 1a outlining detailed legal principles to support securitization transactions involving Croatian debtors, issuers and investors but open to international market
LEGAL SOLUTIONS TEAM
- HR LAWYER
-GERMAN LAWYER
-ITALIAN LAWYER
LEGAL CONCEPTS
Step 1c
MARKET FEASIBILITY FEEDBACK
MARKET CONSULTATIVE PANELS
DOM
INT
INST INV

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.

DRAFT

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	

	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).	Germany. In principle, there should be no observations against such companies on the basis of contractual ringfencing structures (limited liability clauses).	
SUB-PARTICIPATION	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.	Subparticiptaions are not specifically regulated in Germany but are widely used. Recently, subparticipations have been employed in distressed debt transactions.	
CLOSE-END FUNDS	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 *vis-à-vis* the SPV. Close-end funds are regulated in detail by separate provisions.	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.	

SYNTHETIC SECURITIZATION	Although the possibility to execute a synthetic securitization (on point see Bank of Italy rulings in *Bollettino di Vigilanza* 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.	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.	
SPV REGISTRATION PROCEDURE (SPECIAL LICENSES)	The SPV must be registered as a financial intermediary and enrolled in the special register of financial companies held by the Bank of Italy.	No specific requirements – General requirements for establishing GmbHs apply.	
CONTENT OF CONSTITUTIONAL DOCUMENTS (BY-LAWS)	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.	Articles of association.	

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 *società di gestione del risparmio* ("*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 *in rem* agreement	

	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). 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).	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). 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.	
COVERED BONDS	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.	The German Pfandbrief has been the role model for the establishment of covered bond laws and structures elsewhere. Pfandriefe 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 insolcency, serves primarily as cover for the holders of the Pfandbriefe. Further requirements apply.	
IDENTIFICATION OF ASSETS	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.	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. 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	

		(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 (*"Informativa Semplificata"*), 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.	The requirements of banking secrecy, data protection laws and license requirements have to be complied with. 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	

		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. 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). 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.	
COLLATERAL UNDERLYING ASSIGNED RECEIVABLES	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.	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. Notarisation and registration requirements do only apply with respect to mortgages and share pledges.	
SECURITIES	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	General principles apply. Several tranches of a bond issue qualify as separate securities.	The Law on Securities' Markets does not allow the issuance of different tranches of securities.

	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 sp disclosure requirements relating to ABS (in confo with the Prospectus Directive). Requirements as t Prospectus depend largely on the stock exch 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.	

	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.	If an ABS structure qualifies as an investment fund special rules as to taxation apply.	
BANKRUPTCY REMOTENESS AND INSOLVENCY	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).	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.	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.
ACCOUNTING	Law130/1999 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).	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).	
SCOPE OF APPLICATION OF NATIONAL LAW	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.	No specific international private law rules apply with respect to securitization transactions.	

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

MAG0010

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.

1.3 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.

1.4 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.

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.

1.9 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.

1.10 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.

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,

Republic of Croatia
Ministry of Finance

Croatian Securitization Law
Consultative Document

International Market Consultations
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Ministry of Finance would be grateful for any comments to be sent by 24 October 2006 to the following address:

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A INTRODUCTION

Croatian Authorities acknowledge 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 securitization transactions, thus introducing into Croatian financial and legal practice use of securitization techniques.

In order to facilitate the above, the Ministry of Finance has (i) established a Public-Private Steering Committee (hereinafter: the Steering Committee) chaired by Mr Ante Žigman, State Secretary for Finance and consisting of Mr. Zdenko Adrović, Croatian Banking Association, Chairman of the Executive Board, Mr. Davor Holjevac, Vicegovernor of the Croatian National Bank, Mr. Harald Huettenrauch, Vicepresident for Asset Securitization, KfW, Mr. Irakli Managadze, Senior Policy Advisor, EBRD, Mr. Luigi Passamonti, Head of the World Bank's Convergence Program and Mr. Ante Samodol, President of HANFA, and (ii) sought the advice from a working group, sponsored by the Croatian Banking Association and coordinated by local financial advisory firm Arhivanalitika d.o.o., drawn from the private sector and consisting of Mr. Kurt Dittrich, Linklaters, Mr. Bojan Fras, Žurić i partneri and Fabrizio Maimeri, Italian Banking Association (hereinafter: the Legal Solutions Team) to assess the legal and regulatory requirements to undertake securitization transactions on Croatian assets, (iii) obtained an independent legal advice from Porobija & Porobija Law Firm (hereinafter: the Independent Legal Advisors) with respect to the preliminary due diligence performed by the Legal Solutions Team, (iv) discussed and approved the principles for drafting the relevant regulations, on the basis of inputs provided by the Legal Solutions Team and reviewed by the Independent Legal Advisors, (v) mandated the Independent Legal Advisors to prepare this Consultation Document as a basis for International Market Consultations and (vi) appointed the legal drafting team (hereinafter: the Legal Drafting Team) comprising of representatives from the Ministry of Finance, the Croatian National Bank, the Croatian Agency for Supervision of Financial Services and the Croatian Banking Association.

B DRAFT GUIDELINES FOR DRAFTING CROATIAN SECURITIZATION LAW

This Consultation Document, prepared by the Independent Legal Advisor and approved by the Steering Committee, sets out the most important parts of the Draft Guidelines representing the principles approved by the Steering Committee and the Steering Committee's early views on how certain issues should be addressed in the draft Croatian Securitization Law.

The Independent Legal Advisor will finalize the Draft Guidelines after analyzing responses received in the course of the consultation process. This phase is expected to be completed by November 3, 2006.

On the basis of the Final Guidelines, as approved by the Steering Committee, the Legal Drafting Team will start drafting the proposed Securitization Law. The Steering Committee is scheduled to consider the proposed draft Law on November 30, 2006.

Following this meeting, and depending on its outcome, the Ministry of Finance will start the official process to prepare the draft Law.

C RESPONSES TO CONSULTATION

We invite you to comment on the Draft Guidelines and on the questions we have included herein. Please provide us with any additional information to support any comments, issues or arguments raised. Please kindly provide also details of any organization whose views you represent.

D DRAFT GUIDELINES

1 STRUCTURE OF THE SECURITIZATION LAW

The Securitization Law would establish principles and be detailed to the extent required to maintain conceptual consistency and to implement the necessary rules (the "Golden Middle Approach").

Securitization Law would define main principles, deal with certain very important issues such as SPV structures, scope of supervision/licensing of SPV and SPV transactions, servicing, taxes, data protection, bankruptcy remoteness to the extent necessary in order to facilitate the securitization transactions, assignment of future receivables, etc. and prescribe that a very limited scope of purely technical issues would be further elaborated by way of secondary regulations. It is expected that the Law would also, to the extent possible, define/limit the scope of that regulation by defining main principles and the specific issues to be addressed thereby.

Q1: Do you find the above approach advisable?
Do you suggest any other broad principle to inform the drafting of the Law?
Is there any particular example of EU Law that you would suggest to be used as reference?
Please provide examples of the securitization issues usually addressed in the secondary regulations.

2 DEFINITION OF SECURITIZATION TRANSACTION

Securitization Law would provide for a definition of securitization that would include both (i) traditional securitization, i.e. one in which an originator transfers a pool of assets that it owns to an arm's length special purpose vehicle which then issues securities that are based on the underlying pool of assets and (ii) synthetic securitizations, i.e. one in which an originator transfers only the credit risk associated with an underlying pool of assets through the use of credit-linked notes or credit derivatives while retaining legal ownership of the pool of assets.

Q2: What are your views on addressing both definitions in a single law?
If you agree with this approach, are there any aspects that would require particular care?
If you do not agree with this approach, how would you suggest these two types of the securitization should be addressed in the law?

What are your views on approach to include special provisions dealing with asset-backed commercial paper programmes, master trust securitization schemes and sub-participation in the Securitization Law?
In your opinion, would the Securitization Law be the proper place to regulate the covered bonds?
What particular issues should be addressed in the Law with respect to the covered bonds?

3 ASSETS

Assets being object of securitization would be described in a way so as to not exclude any asset or pool of assets which can produce a recurring income stream and thus be a suitable candidate for securitization (receivables, real estates, whole business), provided that other laws do not prohibit the transfer of such assets.

Q3: Do you think any other type of assets should be included in the definition of the assets suitable for the securitization?

The pool of securitized assets would be separated from other assets of the SPV, 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.

In case of SPV being a company, separation of the pool of assets would be achieved by statutory pledge over such pool 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).

Q4: What are your views on the statutory pledge approach?
Do you think the contractual security interest over such assets would be a better solution?

In the case of a fund SPV, separate legal personalities of the fund and the management company would be used to achieve separation.

Q5: Do you agree that separate legal personalities of the fund and the management company would be sufficient to achieve separation of the pool of assets?
If not, what would, in your opinion, be a better solution?

It is proposed that a Securitization law would contain a definition of future receivables, as well as provisions dealing with future flows as eligible collateral for a securitization and ability of enforcement of the sale of future receivables and/or future cash flows to the SPV, especially following the insolvency of the originator.

Q6: In your experience, are future flows usually considered as eligible for securitization in other jurisdictions?

If yes, how are they usually identified in the assignment agreement and any related security agreement?
What is usually the status of the assignment of future flows following insolvency of the originator in other jurisdictions?
Please describe which kind of receivables are usually considered as future receivables, i.e. does future contracted receivables usually fall into this category?
What is usually the status of the assignment of future uncontracted receivables following insolvency of the originator in other jurisdictions?

Steering Committee proposes a concept of securitization register to be considered more closely, with an aim to use such a register at least in order to (i) achieve isolation of the assigned assets from the legal reach of the originator and its creditors; and (ii) make public the assignment of the assets with respect to the debtors and other interested parties. Achieving the registration of the transfer of all ancillary rights attached to the assets without complying with any additional formalities and registrations (land registry, registry of court and notary public's security interest, etc.) may be further analyzed.

Q7: Please provide information on your experience with similar kind of registry existing in Germany, Greece or elsewhere.
Are there any additional benefits and/or reasons why we should consider including provisions on this kind of registry in the Croatian Securitization Law?

4 ORIGINATOR

In principle, the Securitization law would not exclude any potential originator from taking benefit from this type of transactions. However, a treatment of physical persons as originators is still to be further considered.

Q8: What are your views on approach to exclude a possibility of physical persons acting as originators?

5 SPECIAL PURPOSE VEHICLE (SPV)

It is proposed that the Securitization Law would provide for (i) a company and (ii) a fund structure. Transaction participants would have the flexibility of choosing an appropriate legal structure for the SPV (between the said two structures) and a choice of the legal form would be neutral as to regulatory, tax, reporting, or any other kind of public intervention criteria.

In case of Fund vehicle, this would be specific securitization fund, extensively regulated under Securitization Law, with only a few very general provisions of the Investment Funds Law that would apply. Securitization fund regulation would use the concept of assets without legal personality (managed by the fund management company).

Q9: What is your opinion on the above approach of using both company and fund structure?
Are there any advantages of using only one of these two structures?
What difficulties could face the market participants if only one of these structures would be envisaged by the Law?
In case only one type of vehicle would be used, in your experience, which type would be more acceptable to the market participants?

It is proposed that neither the securitization companies nor securitization fund management companies would be subject to capital adequacy and minimal capital requirements. However, in order to protect investors and other participants against risks/losses arising from additional activities of SPV company and/or SPV fund management company, their objects and powers would be restricted as closely as possible to the activities necessary to effect the securitization transaction. Activity limits seems to be important in case of re-sell of the relevant pool of assets. Should the re-sell be permitted under specific conditions, re-sell proceeds should certainly not be managed in an investment fund manner.

Q10: Please provide examples of activities and/or contractual relationships that would be absolutely necessary for the SPV to effect the securitization transaction.
Are there any reasons why we should consider allowing the re-sell of the SPV's pool of assets?
What would usually happen with the proceeds of the re-sell and the SPV following the re-sell?

It remains to be answered whether any limits and, if yes, what limits should be placed on the ability of the SPV to enter into hedging arrangements. Details related to this kind of issues may be prescribed by secondary regulation.

Q11: Please provide details of types of hedging arrangements that would be absolutely necessary to be allowed to SPV, if any?

The Law would envisage the possibility of sale of Croatian receivables to a non-Croatian SPV and it is proposed that the Law also prescribe to what aspects of the transaction the Croatian Securitization Law would be applicable in case a non-Croatian SPV would be included, and/or if foreign law would govern the assignment agreement and/or the securities would be issued abroad.

Q12: Please provide examples of conflict of laws issues market participants usually face in multi-jurisdictional securitization transactions.

It is proposed that the licensing procedure would be such as to not impose unreasonable burden and excessive limitations to SPVs and management companies, and would basically include approval of the constitutional documents and prospectus of the SPV fund,

constitutional documents of the management companies and SPV companies and approval of representation of the same entities.

In addition, it is proposed that a supervision of the SPVs and SPV fund management companies would extend to, including but not limited to, an approval of the management rules, supervision with respect to persons acting as management board members of the management company, ordering of the audits of the fund and the company, reporting for statistical and supervisory purpose, etc.

Definite scope of licensing and supervision of the SPVs is subject to further consideration of HANFA, the Steering Committee and the outcome of the consultation process.

Q13: What are your views on the above proposed approach related to the scope of licensing and supervision of SPV?
What is perceived by the market participants to be acceptable level of licensing requirements and scope of supervision?

It is proposed that both the SPV in the form of a company and the SPV formed as a fund would be incorporated for the purpose of a single transaction, but the SPV fund management company would be allowed to incorporate and manage several funds, each fund serving for the purpose of one and only transaction.

Q14: Are there any particular advantages of allowing multi-transactions SPV?
How is this issue addressed in other EU jurisdictions?

It has not yet been decided whether the securitization structures envisaging intermediary SPV should be allowed by the Securitization Law.

Q15: What could be the benefits for the market participants if the securitization structures envisaging intermediary SPV would be allowed by the Securitization Law?
Please provide information in which cases such intermediary SPVs are usually used and for which purposes?

6 SECURITIES

The Securitization Law would not limit the types of securities that may be issued in securitizations.

Notwithstanding the structure, SPV would be able to issue all types of debt securities governed by Croatian law as well as any foreign law.

It is proposed that either special provisions in the Securitization Law or amendments to the Securities' Market Law would recognize issues in different tranches, without a need of separate prospectus for separate tranches of the same issue.

Q16: Does the latter represent a common practice in other EU jurisdictions?

Securities would be subject to high, but reasonable disclosure standards, in line with internationally accepted ones and thus the EU Prospectus Directive would be applied as a guiding principle. As an exception, the issuance of the prospectus would be obligatory both in case of public and private placements.

Q17: In your opinion, is the latter a reasonable requirement?

Participants to each securitization transaction would be able to decide whether or not the securities should be rated, depending on the target investors. However, the ratings would be obligatory if the intention would be to list the securities in the highest quotation of a Croatian stock exchange.

Q18: What are your views on the above proposed approach related to the rating of the securities?

7 SERVICER

Securitization Law would provide a definition, i.e. a scope of servicing activities. Such provision would also be a legal basis for registration with the court register of corporate entities for providing such services.

It is proposed that the entities authorized to render servicing activities would be (i) licensed financial institutions and (ii) originators. The Law would provide that the originator is entitled to carry on all or any part of the servicing activities without being explicitly registered for providing thereof.

Q19: What are your views on the above proposed approach to allow rendering of servicing activities only to the licensed financial institutions and the originators?

It is acknowledged that one of the noteworthy aspects of securitization transactions is a commingling risk, i.e. a risk of not being able to differentiate between the servicer's financial funds arising from the securitization transaction (which funds are actually not servicer's but instead the servicer is obliged to transfer such funds to the SPV) and its other funds.

Securitization Law would provide for provisions being able to adequately mitigate such commingling risk. It is proposed the relevant provisions to state 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 accounts only in accordance with the SPV's instructions. That way the SPV would have a segregation right (*izlučno pravo*) with respect to the collected amounts.

Q20: In your view, would the principles described above be sufficient to adequately mitigate the commingling risk? Are there any additional ways to mitigate such risk that proved to be efficient in the practice?

Solution is yet to be found as to how to address in the Securitization Law a relation between the servicer's right to enforce a claim and realize the security interest, on one hand, and the fact that it does not have title to the receivable and the related security interes, on the other hand.

Q21: Please provide information in which capacity the servicer usually enforces the assigned receivables and related security interest?

8 BONDHOLDERS' MEETING/FIDUCIARY REPRESENTATIVE/SECURITY TRUSTEE

Given that the issuance of ABS is the principle activity of the SPV, there is arguably a need to give to the ABS holders some control rights over the operations of the SPV. In order to provide such rights to the ABS holders, an organization thereof in a form of a bondholders' meeting and joint - fiduciary – representative, would be envisaged either by the amendments to the Securities Market Law or by the Securitization Law.

Q22: Would there be any practical difficulties if the law would prescribe a minimal scope of authorities of a bondholders' meeting and a joint fiduciary representative of the bondholders?
Is this usual in other EU jurisdictions?

In addition, since 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 ABS holders, it is yet to be decided whether the Securitization Law should introduce in Croatian legal system an institution of the security trustee and, if yes, to what extent could the Anglo-Saxon security trustee principles be adequately incorporated in a civil law system like Croatian.

Q23: What are your views on (i) introducing in the Securitization Law of the security trustee concept in line with common law jurisdictions and (ii) potential difficulties arising from incorporation thereof in civil law system?

9 TAX TREATMENT

Steering Committee understands that comfort should be provided with respect to tax neutrality of securitization transactions and as to what type of taxes are payable by the SPV and ABS investors.

Q24: Please provide examples of how taxation issues are usually addressed in other jurisdictions, i.e. by introducing special provisions in the relevant laws or by obtaining tax administration guidelines or in any other way

Among the issues that need to be considered and definitely opined by the Tax Authority, are the following: withholding tax, VAT and permanent establishment issue triggered by a securitization transaction involving a non-Croatian SPV. When considering the relevant tax issues, it would be taken into consideration that the securitization transaction should not change the character of the original transaction between the originator and the debtor.

Q25: Please provide information on what additional tax problems market participants usually face in the context of the securitization transactions.

10 BANKRUPTCY REMOTENESS

Steering Committee acknowledges that the bankruptcy remoteness of the SPV is one of the main requirements for a successful securitization and that addressing various features for achieving the highest possible degree of the "bankruptcy remoteness" of SPV should be one of priorities.

Bankruptcy of the SPV being a company could not be excluded as a possibility due to the fact that the Croatian Bankruptcy Law would apply thereto without any exception. However, the statutory lien of the ABS holders over the securitized assets, restrictions to be imposed on the SPV with respect to its scope of activities and certain contractual provisions (e.g. limited recourse / no petition clauses, role for bondholders representative, etc.) would minimize the need for legislative intervention regarding the bankruptcy of the SPV.

Q26: Would you agree with the above approach with respect to instruments for minimizing the risk of bankruptcy of the SPV? What other instruments would you suggest for achieving that purpose?

Croatian Law does not explicitly recognize limited recourse and no petition clauses. Having in mind the fact that such clauses are considered to be instruments for achieving bankruptcy remoteness of the SPV and that it is not free from doubts whether the Croatian law would consider such clauses to be valid and enforceable, it is proposed that validity and effectiveness of such clauses would be explicitly acknowledged by the Law.

Q27: How is this issues addressed in other EU jurisdictions?

In addition, the Securitization Law would also recognize and give effect to subordination contractual arrangements between the SPV and its creditors and between the group of creditors concerning the extent of their rights in respect of the SPV's assets.

Q28: Is this approach common in other EU jurisdictions?

It is proposed that further bankruptcy remoteness of the SPV, especially in case of the bankruptcy of the originator and/or servicer could be achieved by e.g. prescribing conditions for the true-sale characterization of the assignment contract, encouraging unvoidability of arm's length assignment of receivables (including future receivables), 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/servicer (right of separation for the benefit of SPV), recognizing the right of the SPV to unilaterally change/terminate collection arrangements with originator/servicer immediately following the opening of bankruptcy procedure thereof, etc.

Q29: What are your views on the above approach related to achieving bankruptcy remoteness?
What other instruments of achieving bankruptcy remoteness of the SPV would you suggest to be included in the Securitization Law?

11 SCOPE OF APPLICATION OF NATIONAL LAW

It is proposed that 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, would be addressed in the Securitization Law.

12 DATA AND CONSUMERS' PROTECTION RULES

Having in mind the existing provisions of Croatian law dealing with secrecy and data protection, in particular the Personal Data Protection Law and the Consumers' Protection Law, that would cause substantial problems to the securitization procedure, it is absolutely necessary that the Securitization Law address these issues in an adequate way.

As a matter of principle, the rights of the debtors of the sold receivables must be preserved and their legal position/rights must not change after a securitization is implemented. It is proposed that the Securitization Law would provide for a possibility of joint notification of debtors by means of e.g. public announcement in the Official Gazette and/or in the daily press.

Q31: Are there any other notification instruments used in EU jurisdictions that, in your opinion, would be more efficient?

Principles of the EU data protection regulations and practice would be used as the guiding principles when addressing the data protection issues. In particular, it is proposed that special attention should be paid to the 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.

Q32: What are your views on the above approach related to the data and consumers' protection rules? What other instruments of dealing with those issues would you propose to be included in the Securitization Law?

13 RECHARACTERIZATION RISK

It is proposed that the Securitization Law would attempt to address a risk that a particular securitization transaction would 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.
Introducing into the draft Securitization Law of a definition of the true sale securitization and a provision stating that characterization thereof for accounting, tax or regulatory reporting purposes would not have impact to legal characterization of the true sale transactions may be further considered.

Q34: What are your views on the above approach related to addressing the recharacterization risk in the Securitization Law?
Has this been done successfully in any EU jurisdiction?
What would be the best way to address that risk in the Law?
What other instruments of dealing with those issues would you propose to be included in the Securitization Law?

14 OTHER ISSUES

It is proposed that the Securitization Law should not specifically address the issues like: statutory limits on costs of securitization transaction, handling and allocating of the surplus cash flow received by the debtors of the assigned receivables, 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 (in cases where a variable interest rate is not linked to some benchmark rate (e.g. ZIBOR, EURIBOR), but is set according to interest rate policy of the originator (lender)) and the content of contracts of securitization transactions.

Q35: What are your views on the approach not to address the abovementioned issues in the Securitization Law?

DRAFT SECURITIZATION LAW BEFORE THE END OF THE YEAR

10 October 2006.

Draft of the Croatian securitization law (securitization being transformation of claims or illiquid assets into tradable securities), should be finished by the end of this year, so it could enter the parliamentary procedure in the first quarter of 2007, Ministry of Finance announced. Besides being a rare example of preparation of regulation in cooperation between public and private sector, (since representatives of Ministry of Finance, Croatian supervisory agency HANFA, Croatian National Bank, Croatian Banking Association, as well as external consultants of World Bank, EBRD and German development bank KfW are currently included in its implementation), this law will be among the first for which a regulative impact assessment (RIA) will be made.

Among others, this assessment will consist of several scenarios of securitization effects on external debt, because there is a possibility that this type of security will be bought by foreign investors, with indirect effect of increasing the foreign debt.

Passing this law will allow companies to replace a part of its illiquid assets by liquid assets by issuing new securities.

In this way, for example, a bank will be able to sell its claims on credits to a special purpose vehicle, which will issue a new security on the capital markets and collect fresh capital. The same principle applies to all subjects that have certain future revenues, like companies for highway toll collection (HAC) or electricity services companies (HEP).

Although a major part of the law draft is already finished, the working group for drafting the Securitization law is still working on several issues regarding this currently unregulated area, for example, approval from the debtor for transferring the debt from the bank to the SPV, tax treatment of these transactions, choosing the type of securities, determining who and how can take part in securitization transactions, criteria for licensing SPVs and so on.

For now, it is certain that the regulatory body will be HANFA, which will be entrusted with licensing of SPVs; they could be entities like today's investment or pension funds, i.e. collections of assets without legal personality represented by fund management companies.

Although securitization as a financial instrument still does not exist in Croatia, it is a procedure similar to what has been applied in the 90's when bonds for settlement of frozen foreign exchange saving deposits were issued. (Hina)

December 2006

FINAL GUIDELINES FOR DRAFTING THE CROATIAN SECURITIZATION LAW

Prepared by Independent Legal Advisors:
Porobija & Porobija
Zagreb, Croatia

A INTRODUCTION

Croatian Authorities and market participants acknowledge the benefits of having secure and transparent rules contained in a well-structured comprehensive regulatory framework, to introduce financial and legal practice use of securitization techniques into Croatia.

In order to facilitate the above, the Ministry of Finance has (i) established a Public-Private Steering Committee (hereinafter: the Steering Committee) chaired by Mr Ante Žigman, State Secretary for Finance and consisting of Mr. Zdenko Adrović, Croatian Banking Association, Chairman of the Executive Board, Mr. Davor Holjevac, Vicegovernor of the Croatian National Bank, Mr. Harald Huettenrauch, Vicepresident for Asset Securitization, KfW, Mr. Irakli Managadze, Senior Policy Advisor, EBRD, Mr. Luigi Passamonti, Head of the World Bank's Convergence Program and Mr. Ante Samodol, President of HANFA, and (ii) established a working group drawn from the private sector and consisting of Mr. Kurt Dittrich, Linklaters, Mr. Bojan Fras, Žurić i partneri and Fabrizio Maimeri, Italian Banking Association (hereinafter: the Legal Solutions Team) to assess the legal and regulatory requirements to undertake securitization transactions on Croatian assets, (iii) obtained an independent legal advice from Porobija & Porobija Law Firm (hereinafter: the Independent Legal Advisors) with respect to the preliminary due diligence performed by the Legal Solutions Team, (iv) discussed and approved the principles for drafting the relevant regulations, on the basis of inputs provided by the Legal Solutions Team and reviewed by the Independent Legal Advisors, (v) mandated the Independent Legal Advisors to prepare this Consultation Document as a basis for International Market Consultations and (vi) appointed the legal drafting team (hereinafter: the Legal Drafting Team) comprising of representatives appointed by the Ministry of Finance, the Croatian National Bank, the Croatian Agency for Supervision of Financial Services and the Croatian Banking Association, (vii) published the Securitization law Consultative Document and (viii) obtained a feedback from certain market participants with respect to the issues raised in the Consultative Document

B PURPOSE OF THESE GUIDELINES

These Final Guidelines for Steering Committee approval consists of (i) the principles approved by the Steering Committee on its meeting held on August 30, 2006 and (ii) certain principles that are presented here as, among others, a result of the feedback from market participants to the issues raised in the Consultative Document.

On the basis of the Final Guidelines, the Legal Drafting Team should complete drafting the Croatian Securitization Law. It is understood that the Steering Committee will consider such draft law before it is released by the Ministry of Finance for broader consultations by the relevant regulators. Preparation of these Final Guidelines has not benefited from access to work-in-progress by the Legal Drafting Team.

C RESIDUAL ISSUES FOR STEERING COMMITTEE CONSIDERATION

Following is a list of issues to be finally decided by the Steering Committee:

1. Operating of the SPVs as multi-issuance vehicles and using of intermediary SPVs;

2. Definite scope of licensing and supervision of the SPVs;.

3. Suitibility of the taxes, pension and/or health contributions for securitization;

4. Obligatory rating of the securities issued in the course of securitization transactions and listed in the highest quotation market;

5. Prospectus requirements in case of the securities issued in the course of securitization transactions by way of private placement to institutional investors.

D FINAL GUIDELINES

1 STRUCTURE OF THE SECURITIZATION 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").

Securitization Law should define main principles, deal with certain very important issues such as SPV structures, scope of supervision/licensing of SPV and SPV transactions (if any), servicing, taxes, data protection, bankruptcy remoteness to the extent necessary in order to facilitate the securitization transactions, assignment of future receivables, etc. and prescribe that a very limited scope of purely technical issues should be further elaborated by way of secondary regulations. In other words, the Law should take a rather high level principle approach to regulate the abovementioned issues to prevent the framework from becoming inflexible to market innovation. According to the European Securitization Forum (hereinafter: the ESF)[1], "the Luxembourg Law is generally praised as the best existing example in that regard".

In order to avoid the proliferation of administrative measures that could generate confusion, in addition to defining the issues subject to secondary regulation, the Law should also, to the extent possible, define/limit the scope of that secondary regulation by defining main principles and the specific issues to be addressed thereby (such as e.g. regulatory capital treatment for financial institutions originators until the Basel II Accord is implemented in Croatia).

Also, as a mater of principle and to the extent possible, all issues to be prescribed should be included in the Securitization Law itself and not in various other laws, i.e. amendments to such laws. Namely, the latter strategy could easily result in discrepancies in wording and interpretation of such different laws, which could lead to further legal uncertainties.

[1] ESF is a trade association comprised of 160 firms active in the securitization markets across Europe, including commercial and investment banks, investors, trustees, servicers, law firms, insurance companies, rating agencies, auditors, IT service providers and stock exchanges. The goal of the ESF is to promote the efficient growth and continued development of this market throughout Europe, and to advocate the positions, represent the interests, and serve the needs of our members. The ESF also undertakes initiatives designed to educate and inform external constituencies, including legislative and regulatory officials, the financial media, industry participants and others concerning the operation, importance and policy benefits of the securitization market and related activities throughout Europe

Principle 1.1: Securitization Law should take a rather high level principle approach to regulate the relevant issues in order to prevent the framework from becoming inflexible to market innovation

Principle 1.2: Secondary regulation should be limited in scope and in line with main principles and the specific issues defined by the Securitization Law

2 DEFINITION OF SECURITIZATION TRANSACTION

Securitization Law should provide for a single definition of securitization that would cover securitization structures in which (i) an originator actually transfers a pool of assets that it owns (through a sale/assignment) to an arm's length special purpose vehicle which then issues securities that are based on the underlying (segregated) pool of assets and (ii) an originator retains legal ownership of the segregated pool of assets and transfers only the credit risk associated with an underlying (segregated) pool of assets through the use of credit-linked notes or credit derivatives or by using a sub-participation scheme in which the funds provided to the originator by the SPV by way of a loan would be repaid solely by the proceeds from the segregated pool of assets. The Law should make clear that (a) the sole purpose of the SPV is to acquire pools of assets or risks from such assets and to channel the payments from the underlying assets to investors and (b) segregation would occur at the level of the SPV in the event under (i) above and at the level of the originator in any event under (ii) above.

Definition of securitization should provide for a clear distinction between the securitization transaction, on one hand, and factoring and/or asset sale, on the other hand.

The definition of the securitization should be such as to permit various securitization structures such as asset-backed commercial paper programmes, the master trust securitization schemes, etc., thus allowing structures with replenishment of assets, active pool management and, subject to the approval of the Steering Committee, multi-issuance structures, however without excessive detailed regulation at the law level in order not to discourage market innovations.

Principle 2.1: Securitization Law should provide for a definition of the securitization wide enough to cover the synthetic and true sale securitization (including various securitization structures such as sub-participation, asset-backed commercial paper programmes, the master trust securitization schemes, etc.)

3 ORIGINATOR

As the securitization objectives (e.g. regulatory capital relief, financing, improving solvency or ratings, etc.) vary by type of originators, the Securitization Law should not exclude any legal person from being a potential originator of these types of transactions.

Principle 3.1: No legal entity should be excluded from being a potential originator of the securitization transactions

4 SPECIAL PURPOSE VEHICLE (SPV)

Securitization Law should provide for a Special Purpose Vehicle organized either as (i) a company or as (ii) a fund structure. Transaction participants should have the flexibility of

choosing an appropriate legal structure for the SPV (between the said two structures) and a choice of the legal form should be neutral as to regulatory, tax, reporting, or any other kind of public intervention criteria.

In case of fund vehicle, this should be a specific Securitization Fund, regulated under Securitization Law to a reasonable extent, with only a few very general provisions of the Investment Funds Law that should apply. Securitization Fund regulation should use the concept of assets without legal personality (managed by the fund management company). Securitization fund management company's activities would have to be limited by reference to the purpose of such fund.

Neither the securitization companies nor securitization fund management companies should be subject to capital adequacy and minimal capital requirements. However, in order to protect investors and other participants against risks/losses arising from additional activities of the securitization companies and/or securitization fund management companies, their corporate objects and powers should also be limited to the activities necessary to effect the securitization transaction.

Activity limits are also important in case of re-sale of the relevant pool of assets. According to the ESF, the re-sale of the pool of assets should be permitted under flexible conditions, as it may become necessary in a particular transaction due to need to (i) replenish the pool of assets with new assets (in case of securitization of revolving receivables), (ii) enable the portfolio managers to re-sell the assets in order to prevent deterioration of the pool of assets or to generate a higher return for investors and thus to generally increase the investors' protection, and/or (iii) enable so-called clean-up calls e.g. in cases where due to the expenses of the transaction, such transaction is no longer viable.

Re-sell proceeds may be used e.g. for a re-investment in new assets and/or repayment to the investors, but should certainly not be managed in an investment fund manner.

Ability of the SPV to enter into hedging arrangements should not be denied, however the Legal drafting team should include a general provision dealing with the main purposes for which the entry into such hedging agreements would be allowed (e.g. for the purpose of ensuring predictability of payments under the issued securities, hedging with the purpose of limiting and/or minimizing various kinds of risks, and similar).

The Law should envisage the possibility of the originator to transfer the assets to a non-Croatian SPV. Non Croatian SPV would of course remain governed by the law of the place of its incorporation on corporate / bankruptcy / tax treatment matters. Please see also under item 11 below.

The SPV company should be able to issue all types of debt securities governed by Croatian law as well as any foreign law (where "foreign law" should clearly mean both (a) the law applicable to the securities *per se*, that is the law determining the form - physical, immobilized or dematerialized – of the securities, their validity and extinction requirements (also known as the issuance law) and (b) the law applicable to the terms and conditions underlying the purchase and repayment of the securities (otherwise known as contract law). The SPV fund would instead be represented by units governed by Croatian law.

Any type of SPV should have an addition to its name in the form of an abbreviation that identifies it as a securitization vehicle. Furthermore, the Law should not limit the use of other vehicles (e.g. trusts) that may become available in the future.

ESF recommended that the incorporation of the securitization SPV should not be subject to prior authorization from a regulator, although such model is followed in some European

jurisdictions. However, the ESF believes that incorporation of the SPV fund's management company could be subject to prior approval from the securities regulator (i.e HANFA), as well as subject to a certain scope of supervision (i.e. approval of the constitutional documents of the management companies, management rules and persons managing those companies). Moreover, ESF is of opinion that establishment of fund and the issue of securitization bonds by the SPV company should, as being a capital market transactions, be subject to otherwise prescribed supervision.

It is our view that, in any way, SPVs and the SPV fund management company should not be subject to extensive regulator's supervision in a way e.g. HANFA supervises investment funds management companies, as the nature of the securitization transactions and in particular activities undertaken by the SPV and/or the SPV fund management company, and consequently the risks associated thereby, differ great deal from the risk attached to e.g. investment funds and their management companies.

Supervision of the SPVs and SPV fund management companies could extend to approval of the management rules, supervision with respect to persons acting as management board members of the management company, ordering of the audits of the fund and the company, reporting for statistical and supervisory purpose, etc.

In addition, the regulator should focus on fulfillment of requirements necessary for issuance of the securities (please see item 6 below) and incorporation of the fund(s), as capital market transaction.

As a conclusion, licensing and supervision procedure should be such as to not impose unreasonable burden and excessive limitations to SPVs and the SPV fund management companies.

The Law should provide for appropriate extension of the competences of HANFA having regard to the reasonable regulatory cost principle. In any event, licensing, limitation of representation of the SPV and supervision, if any, should not cause delays and/or increased costs in structuring and performing the transaction, as otherwise this would certainly lead to international market participants avoiding to use Croatian jurisdictions and Croatian SPVs for securitization transactions and would encourage the development the cross-border transactions.

Definite scope of licensing and supervision of the SPVs is subject to further consideration and decision of HANFA and the Steering Committee.

Connected somewhat to the previous issue, the Securitization Law should also address the issue whether an SPV could be set up for a purpose of a "single-operation" or if a "multi-operations" SPV would also be allowed.

Namely, the Steering Commitee was of a view that both the SPV company and the SPV fund should be incorporated for the purpose of a single transaction, and the SPV fund management company should be allowed to incorporate and manage several funds, each fund serving for the purpose of one and only transaction.

It should be noted that the ESF emphasized that in most jurisdictions securitization SPVs are construed as multitransaction vehicles as such structures resulted with many benefits, such as (i) reduction of administrative and audit expenses derived from incorporating and operating SPVs, (ii) maximizing name recognition of the SPVs, and (iii) reducing the time to set up a transaction.

ESF pointed out that a principle of separate compartments is accepted in a number of jurisdictions whereby each compartment operates as a separate entity from the point of view of the securities holders, but all compartments together constitute a unity from the point of view of the SPV management. However, the ESF believes that the statutory pledge principle could also be used to the same effect.

It is our opinion as the independent legal advisors, that the Steering Commitee could consider two different options:

(i) introducing in the Securitization Law of the SPV company and SPV fund structure whereby:

(x) the SPV company would be a single operation entity not being subject to licensing and supervision requirements (only the issuance of the debt securities would be subject to the supervision as a capital market transaction); and

(y) the SPV fund management company would be subject to licensing and supervision and also be able to incorporate and operate more than one SPV fund (incorporation of each fund also being subject to the supervision);

or

(ii) envisaging in the Securitization law of the SPV company and SPV fund structure (managed by the SPV fund management company) whereby all those subject would be subject to the licensing and supervision of the regulator, but multi-issuance structures would also be allowed in case of the SPV company.

The Securitization Law should not restrict the existence of structures where several originators would assign their receivables to the same SPV.

The Securitization law should address the definition of the conflict of interests between different parties to the transaction, with the obligation to disclose such potential conflicts in the ABS prospectus.

With respect to the issue whether the securitization structures envisaging intermediary SPV should be allowed by the Securitization Law. The ESF recommends that the Securitization Law should not impose restrictions to using of intermediary SPV. Namely, there may be a number of reasons why a particular transaction would envisage having an SPV for the purchase of underlying assets (or risks connected thereto) and a separate SPV to issue the asset-backed securities. These structures are normally used to isolate the risk and maximize the performance to the extent possible of each of the SPVs. We see no reasons why the Securitization Law should not envisage this structure as well (for example, for the purpose of applying the Croatian segregation / statutory lien rules upon an SPV incorporated in Croatia, but at the same time delegating the issuance of the securities in the international market to a specialized SPV incorporated abroad).

Principle 4.1: SPV to be available in the form of a company and a special securitization fund subject to the management of the securitization fund management company

Principle 4.2: SPVs should not be subject to capital adequacy and minimal capital requirements, but rather to the prescribed activity limits

Principle 4.3: Non-Croatian SPV should also be recognized as parties in securitization transactions

Principle 4.4: Regulatory requirements should primarily focus on capital market part of the transaction, i.e. issuance of the securities and incorporation of a fund

Principle 4.5: Scope of licensing and supervision of the securitization transactions and the parties thereto should not impose unreasonable burden and excessive limitations to the transaction

5 ASSETS

Assets being object of securitization should be described in a way so as to not exclude any asset or pool of assets which can produce a recurring income stream and thus be a suitable candidate for securitization (receivables, real estates, whole business), provided that other laws do not prohibit the transfer of such assets. ESF suggested that any restrictions imposed by any other Croatian law with respect to the assets that could be subject to securitization should be removed by the Securitization Law. Steering Committee should make a final decision whether the ESF suggestion should be accepted and consequently whether the draft Securitization Law should envisage an explicit provision allowing for securitization of e.g. taxes, pension and/or health contributions, etc.
The pool of securitized assets is to be reserved for satisfaction of claims by the owners of the securities or the holders of the units in the fund (i.e. the investors) and the other creditors of the SPV related to costs of the transaction. For this reason, the pool of securitized assets should be segregated from other assets of the SPV.

In case of SPV being a company, separation of the pool of assets should be achieved by statutory pledge over such pool for the benefit of the investors and (to the extent possible) the other creditors of the SPV related to the costs of the transaction (in each case excluding other creditors unrelated to the transaction).

Alternatively, contractual security interest could be created over such pool of assets. In both cases, the security interest could be held by the security trustee. On this alternative, please see, however, item 8 below.

In the case of a SPV incorporated as a fund, non-existence of legal personality of the fund and its separateness from the originator and management company, whereby the management company manages the fund but does not own it, should be sufficient to achieve segregation of the pool of assets.

When addressing the assets being appropriate for securitization, the main requirement should be that the relevant assets must be identified or be capable of being identified at the time the relevant assets come to existence.

In that respect, particular attention should be paid to the issue of future receivables. Draft law should contain a definition of future receivables, as well as provisions providing answers to the questions whether future flows constitute eligible collateral for a securitization and whether the sale of future receivables or future cash flows to the SPV could be enforced, especially following the insolvency of the originator.

Special attention should be paid to the status of the assignment of the future receivables from the perspective of the potential bankruptcy of the originator. It is recommended by the ESF that the approach introduced in the Luxembourg Law is followed in that respect and that consequently the Securitization Law explicitly prescribes that the assignment of future receivables would be effective upon coming into existence, notwithstanding the opening of a bankruptcy procedure or any similar procedure against the originator before the date on which the assigned receivables come into existence.

Under Croatian law, together with the assignment of the receivables, transfer of the collateral being of ancillary legal nature occurs as well. Having in mind the fact that registration thereof usually becomes an issue in case of the enforcement of the security interest or in case of the originator's bankruptcy, as well as the costs and time necessary for the registration, a concept of securitization register should be considered more closely.

Such register may be used for at least two purposes: (i) to achieve isolation of the assigned assets from the legal reach of the originator and its creditors; and (ii) to make public the assignment of the assets with respect to the debtors and other interested parties.

Achieving the registration of the transfer to the SPV of all ancillary rights attached to the assets without complying with any additional formalities and registrations (land registry, registry of court and notary public's security interest, etc.) should be further analyzed. In order to analyze more closely the benefits of such registers, additional information and experience on how similar register works in Greece and Germany (refinance register) should be obtained and researched while drafting the Law.

Principle 5.1: Securitization law should not exclude any assets otherwise suitable for securitization from being securitized

Principle 5.2: Securitization Law should provide for segregation of the securitized assets

Principle 5.3: Securitization Law should include special provisions related to the securitization of the future receivables

6 SECURITIES

The Securitization Law should not limit the types of debt securities that may be issued in securitization transactions.

Either special provisions in the Securitization Law or amendments to the Securities' Market Law should recognize issues in different tranches, each such tranche being subject to different terms and conditions. It should also be made explicit that a single prospectus would suffice for a single transaction, regardless of the tranching of the securities.

Provisions of the Securities Market Law regarding the approvals for issuing securities will apply to the securities issued under Croatian law in the course of securitization transaction (both in case of SPV company and fund). However, special provisions in the Securitization Law are necessary in order to adequately deal with specific information characteristic for securitization (e.g. disclosure of potential conflicts of interests between the originator and the SPV; the SPV as issuing entity has no history of financial reports; etc.). In that respect, the stock exchange regulations will also need to be amended in order to address particularities of securitization transactions.

Securities should be subject to high, but reasonable disclosure standards, preferably in line with internationally accepted ones and thus the EU Prospectus Directive should be applied as a guiding principle. It is suggested that in case of a private offer of the securities made only to the institutional investors, there is no obligation to make the prospectus, unless one or more institutional investors subscribe and pay in all the securities of that issue, with the intention of offering them for sale to persons that are not institutional investors within a period shorter than one year. In the later case, the SPV would be obliged to file to HANFA the request for approval of the prospectus before the institutional investor starts offering

securities for sale, and the institutional investor shall be obliged to make such prospectus available to potential customers before the sale.

Participants to each securitization transaction should be able to decide whether or not the ABS should be rated, depending on the target investors. Contrary to the views of certain members of the Steering Committee that the ratings should be obligatory if the intention is to list the securities in the highest quotation market, ESF believes that this should not be the case, as in countries like France or Spain where the law imposed mandatory ratings, such obligation has been strongly contested by market participants. It seems reasonable that the Securitization law does not provide for any special provisions with respect to the ratings applicable to the securities issued under that law, but rather in that respect such securities should remain subject to the general provisions of the Securities Market Law and the relevant stock exchange rules.

On the other hand, it would be advisable that the Securitization law prescribes special provisions imposing different requirements for listing of the securities issued in the securitization structure in the first quotation of the stock exchange comparing to those prescribed by the Securities Market Law (e.g. requirements related to the share capital of the issuer and the publication of the financial reports in at least three business years prior to the listing should not be applicable in the securitization structures, or otherwise the securities issued by the SPV in principle would not be acceptable for listing in the first quotation of the Croatian stock exchange). In that respect, as stated above, the stock exchange regulations will also need to be amended accordingly.

Profit Tax Law provides for a withholding tax on interest payable by Croatian payer to foreign payees. The said Law provides for an exception only with respect to the interest payable on bonds (corporate or state) held by foreign legal entities. Therefore, in order to avoid implicit preference for certain types of ABS, the said exemption should be extended to all types of securities issued under the Securitization Law.

Securities issued or marketed under a foreign law (see also item 5 above) would remain subject to the applicable issuance or contract law on any matters discussed above, such as disclosure, prospectus or rating requirements.

Principle 6.1: Securitization Law should provide special provisions dealing with certain issues relevant also in securitization transactions (one issue with several different tranches, disclosure standards, ratings, listing requirements, withholding tax)

7 SERVICER

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.

Securitization Law should provide a definition, i.e. a scope of servicing activities. Such provision would also be a legal basis for registration with the court register of corporate entities for providing such services.

Entities authorized to render servicing activities should be (i) licensed financial institutions and (ii) originators. The Law should provide that the originator is entitled to carry on all or any part of the servicing activities without being explicitly registered for providing thereof.

The Law should provide for a possibility that some of the activities making part of the servicing activities are rendered by different service providers. It would also be useful for the Law to explicitly prescribe that rendering of any activities making part of the servicing activities would not qualify as providing legal advice. In view of the possible future evolution of the servicing activity, the Law should delegate secondary regulation to add further categories of eligible servicers (other than licensed financial institutions and originators) when appropriate.

Supervision similar to that described for management companies (see item no 5) would be appropriate for the servicers as well. As stated above, it was also recommended by the ESF that the Croatian law should recognize servicers authorized in EU jurisdictions.

Offering circular or other relevant disclosure document should provide for sufficient details about the servicer and the contractual arrangements between the SPV and the servicer.

One of the noteworthy aspects of securitization transactions is certainly a commingling risk, i.e. a risk of not being able to differentiate between the servicer's financial funds arising from the securitization transaction (which funds are actually not servicer's but instead the servicer is obliged to transfer such funds to the SPV) and its other funds.

Securitization Law should provide for provisions being able to adequately mitigate such commingling risk. Relevant provisions should state 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 accounts only in accordance with the SPV's instructions. That way the SPV would have a right of separation (*izlučno pravo*) with respect to the collected amounts. To the extent necessary, any detailed regulations in that respect should be developed in the secondary regulations.

In order to enable the servicer by operation of law to enforce a claim and realize the security interest in its name and on behalf of the SPV, appropriate and explicit provisions to that effect should be included in the law.

Principle 7.1: Securitization law should prescribe a definition of the servicing activities

Principle 7.2: Originator, licensed financial institutions and other categories of eligible servicers (as prescribed by subsequent secondary regulation) should be authorized to render servicing activities

Principle 7.3: Securitization Law should provide provisions appropriate to mitigate any commingling risk related to the servicers

8 BONDHOLDERS' MEETING/FIDUCIARY REPRESENTATIVE/SECURITY TRUSTEE

Given that the issuance of ABS is the principal activity of the SPV company, there is arguably a need to give to the ABS holders some control rights over the operations of such SPV. In order to provide such rights to the ABS holders, an organization thereof in a form of a bondholders' meeting and joint - fiduciary – representative, should be envisaged either by the amendments to the Securities Market Law or by the Securitization Law. Such provisions should prescribe at least a minimum scope of the authorities of a bondholders' meeting and a joint - fiduciary – representative, leaving other issues to be defined by the terms and conditions of the ABS.

In case of SPV funds, the Law should prescribe that the SPV fund management company should act in the interest of holders of the fund's units.

In addition, since 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 ABS holders, it is yet to be decided whether the Securitization Law should introduce in Croatian legal system an institution of the security trustee and, if yes, to what extent could the Anglo-Saxon security trustee principles be adequately incorporated in Croatian law. ESF believes that introducing of the new institute such as this one would not be absolutely necessary from the perspective of the Securitization Law, but instead that the broad and flexible provisions of the Securitization Law related to the bondholders representative would suffice the purpose.

As Croatian law does not recognize the concept of the trust and consequently of the security trustee, it is our view as the independent legal advisors that the initiative for ratification of the Hague convention on the law applicable to trusts and on their recognition that entered into force on 1 January 1992 (which is an international private law convention whose ratification does not introduce *per se* the concept of trust in a legal system otherwise not recognizing such concept, but allows the recognition of a trust regulated abroad) and that has been ratified so far by, among others, Italy, France, Luxembourg, the Netherlands, UK, should considered by the relevant Croatian authorities. In that way it would become possible that a foreign trust is registered in the land registry as the holder of property and/or security interest.

Principle 8.1: Securitization law should contain provisions on the bondholders' meeting and joint (fiduciary) representative of the bondholders and their minimum scope of activities, leaving the other relevant issues to be defined by the terms and conditions of the relevant securities. Securitization fund management company should act in the interest of the fund's units.

9 TAX TREATMENT

Certainty should be provided as to what type of taxes are payable by the originator, the SPV and the investors. Since multi-jurisdictional transactions create certain additional tax issues, those should be also considered by the Tax Administration and adequately addressed in the Securitization Law or amendments to the relevant tax laws and regulations.

Among the issues that need to be considered and adequately regulated, are the following: withholding tax, VAT and permanent establishment issue triggered by a securitization transaction in general and as well as by involving a non-Croatian SPV in such transaction. In addition, it should be ensured that no transfer tax are payable on the transfer of the assets or the security to the SPV.

When considering the relevant tax issues, it should be taken into consideration that the securitization transactions are not tax motivated, they do not change the character of the original transaction between the originator and the debtor and they are construed to achieve fiscal transparency and neutrality.

Principle 9.1: Securitization law should provide certainty as to the taxation issues arising in the course or as a result of the securitization transaction

10 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 should be one of priorities.

SPV fund should not be made subject to general bankruptcy law by virtue of the Securitization law.

Although the insolvency of the SPV being a company is a rather remote possibility as securitizations are generally structured in a way to make this event very unlikely, the Securitization Law should address specific issues aiming at achieving the bankruptcy remoteness even more.

Bankruptcy of the SPV being a company could not be excluded as a possibility due to the fact that the Croatian Bankruptcy Law would apply thereto without any exception. However, the statutory lien of the ABS holders over the securitized assets, restrictions to be imposed on the SPV with respect to its scope of activities and certain contractual provisions (e.g. limited recourse / no petition clauses, role of bondholders representative, etc.) minimize the need for legislative intervention regarding the bankruptcy of the SPV.

Croatian Law does not explicitly recognize limited recourse and no petition clauses. Having in mind the facts that such clauses are considered to be instruments for achieving bankruptcy remoteness of the SPV and that it is not free from doubts whether the Croatian law would consider such clauses to be valid and enforceable, the Legal Drafting Team should ensure that the validity and effectiveness of such clauses are explicitly acknowledged by the draft Law. In that respect, the Luxembourg securitization law may be a good example as to how to address this issue in the draft Securitization law.

Further bankruptcy remoteness of the SPV, especially in case of the bankruptcy of the originator and/or servicer could be achieved by e.g. prescribing conditions for the true-sale characterization of the assignment contract, encouraging unvoidability of arm's length assignment of receivables (including future receivables), i.e. ensuring that the transactions being in compliance with a definition of true sale assignment cannot be challenged by the originator's creditors or bankruptcy administrator unless they can demonstrate that the transaction was a fraudulent conveyance, 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/servicer (right of separation for the benefit of SPV), recognizing the right of the SPV to unilaterally change/terminate collection arrangements with originator/servicer immediately following the opening of bankruptcy procedure thereof, etc. In the event of securitization through credit derivatives or sub-participation scheme, bankruptcy remoteness would apply directly at the level of the originator through the exclusion from the bankruptcy estate of the underlying assets and related cash flows as a consequence of the statutory lien provision.

The above envisaged bankruptcy remoteness rules would apply to the relevant Croatian entities (whether originators, servicers, SPVs) as foreign entities would be subject to their applicable foreign bankruptcy law.

Principle 10.1: As a matter of priority, the Securitization Law should contain provisions adequate to achieve the maximum possible degree of bankruptcy remoteness of the SPV (including, but not limited to recognition of the limited recourse and no petition clauses, defining requirements for a true-sale characterization of the transactions, etc.)

11 SCOPE OF APPLICATION OF NATIONAL LAW

Multi-jurisdictional securitization transactions very often face significant legal barriers and/or legal uncertainties. It could be expected that in a great deal of securitization transactions substantial foreign elements would be present, e.g. foreign SPV acquiring receivables due by domestic debtors, domestic SPV issuing securities abroad, domestic SPV acquiring receivables due by foreign debtors and contracting servicing arrangements with foreign servicer, domestic SPV issuing ABS abroad, etc. 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 (e.g. benefit of provisions related to statutory lien, taxation and bankruptcy remoteness, reporting for statistical and supervisory purpose, etc.), should be addressed in the Securitization Law.

The extent of application of the Law should also be clear in transactions where foreign law would govern the assignment agreement and/or the securities would be issued abroad.

Therefore, it is suggested that a special attention of the Legal Drafting Team is paid to the issue of applicable law in the context of various aspects of such multi-jurisdictional securitization transactions (including, but not limited to those mentioned above). In this respect, some guidelines (without pretending to be exhaustive) are given throughout the document on international private law matters connected with the issuance and marketing of securities, incorporation and bankruptcy of SPV companies and claw back rules.

Principle 11.1: Securitization Law should provide for a clear scope of its application in transactions containing one or more foreign elements

12 DATA AND CONSUMERS' PROTECTION RULES

Having in mind the existing provisions of Croatian law dealing with secrecy and data protection, in particular the Personal Data Protection Law and the Consumers' Protection Law, that would cause substantial problems to the securitization procedure, it is necessary that the Securitization Law address these issues in an adequate way.

Since the data and consumers' protection are particularly sensitive issues deserving considerable attention in the consulting and the drafting stage, it shall be of the essence for drafting the relevant provisions in the Securitization Law that the representatives of Data Protection Agency and Consumers' Protection authorities are deeply engaged in the forthcoming consultations and drafting.

As a matter of principle, the rights of the debtors of the sold receivables must be preserved and their legal position/rights must not change after a securitization is implemented. Decision whether or not, and if yes when, the originator and/or the SPV would inform the debtors of the sale and assignment should remain with the transaction participants.The Securitization Law should provide for a possibility of joint notification of debtors by means of e.g. public announcement in the Official Gazette and/or in the daily press. In order to facilitate the use of such notification and to avoid any legal uncertainty resulting therefrom, an explicit provision on legal consequences of such notification (i.e. legal consequences thereof should be the same as in case of notification sent to each debtor directly and separately) should be incorporated in the Securitization Law. Again, the data and consumers' protection issues would have to be adequately addressed in this context as well.

Principles of the EU data protection regulations and practice should be used as the guiding principles when addressing the data protection issues. In particular, special attention should be paid to the 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.

ESF recommends the simplest and the least costly way to deal with secrecy (including banking secrecy), data and consumers' protection issues and that is to include in the Securitization Law an explicit provision stating that the transfer of necessary personal data to the relevant transaction participants (e.g. servicer, rating agencies, advisors) would be allowed as such participants would be bound by the same secrecy and data protection obligations as the originator.

Principle 12.1: Rights of the debtors of the sold receivables must be preserved and their legal position/rights must not change after a securitization is implemented

Principle 12.2: The Securitization Law should provide for a possibility of joint notification of debtors by means of e.g. public announcement in the Official Gazette and/or in the daily press

Principle 12.3: The Securitization Law should implement principles of the EU data protection regulations and practice

13 RECHARACTERIZATION RISK

Recharacterization risk is one of the risks related to the securitization transactions.

Mitigation of such risk would adequately be achieved by (i) introducing into the draft Securitization law of a definition of the true sale securitization and of a provision stating that characterization thereof for accounting, tax or regulatory reporting purposes would not have impact to legal characterization of the true sale transactions and (ii) dealing with bankruptcy remoteness as mentioned herein.

Principle 13.1: The Securitization Law should provide provisions adequate to mitigate recharacterization risk

14 OTHER ISSUES

Securitization Law should not specifically address the issues like: statutory limits on costs of securitization transaction, handling and allocating of the surplus cash flow received by the debtors of the assigned receivables, 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 (in cases where a variable interest rate is not linked to some benchmark rate (e.g. ZIBOR, EURIBOR), but is set according to interest rate policy of the originator (lender)) and the content of contracts of securitization transactions.

Having in mind the costs of securitization transactions, which are always substantial due to a complexity of the relevant structures, as well as other resources necessary for such transactions it is highly unlikely that the size of this kind of transactions would be small. Therefore, it does not seem reasonable to impose any statutory minimum size of transactions.

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

Zagreb, 19 December 2006

Dear Sirs,

Report on the Draft Croatian Securitization Law dated 12 December 2006

1 Introduction

The Steering Committee on its meeting held on 30 August 2006 (i) mandated Porobija & Porobija Law Firm (hereinafter: the Independent Legal Advisors or ILA) to prepare the Consultation Document as a basis for international market consultations and (ii) appointed the legal drafting team (hereinafter: the Legal Drafting Team or LDT) comprising of representatives appointed by the Ministry of Finance, the Croatian National Bank, the Croatian Agency for Supervision of Financial Services and the Croatian Banking Association.

Following draft Guidelines for Drafting the Law on Securitization made available by ILA to the LDT on 22 September 2006, publication of the Securitization Law Consultative Document prepared by the Independent Legal Advisors and after having obtained feedback from certain market participants with respect to the issues raised in the Consultative Document, the Independent Legal Advisors has issued the Final Guidelines for Steering Committee approval that consisted of (i) the principles approved by the Steering Committee on its meeting held on August 30, 2006 and (ii) certain principles that are presented there as a result of, among others, the feedback from market participants to the issues raised in the Consultative Document.

On the basis of the Final Guidelines, the Legal Drafting Team has provided the draft Securitization Law (hereinafter: the draft SL), in order for the Independent Legal Advisors to be able to provide legal opinion on such draft law and for the Steering Committee to consider such draft law before it is released by the Ministry of Finance for broader consultations by the relevant regulators.

Legal Drafting Team distributed the initial draft Securitization Law ("0" draft) to the Independent Legal Advisors on 13 December 2006 for their first review of such draft.

In fulfilling their task, the Independent Legal Advisors, reviewed the draft Securitization Law, analyzed the provisions contained therein and produced this report containing comments, views and recommendations related to the draft Securitization Law.

Taking into consideration the very short period of time between circulation of documentation between ILA and LDT and the fact that the ILA consider the draft SL to be in its early stage, the ILA views and comments contained herein do not attempt to be exhaustive, but more of a general nature and only in certain cases focused on the relevant details.

Following the Steering Committee's meeting to be held on 22 December 2006 and delivery of the next draft Securitization Law (that would reflect the Final Guidelines approved by the Steering Committee, comments and suggestions presented herein and possibly the outcome of the next round of consultations with the relevant Croatian authorities), we would gladly provide the Steering Committee with a final opinion on the final draft Securitization Law prepared by the LDT.

2 Content

This Report contains general remarks regarding compliance of the draft SL with the Final Guidelines and points out the issues to be further developed and/or introduced in the draft SL in order for the draft SL to comply with the principles contained in the Final Guidelines. It also contains certain detailed comments regarding some of the provisions of the draft SL.

3 ILA report on the draft SL

3.1 Structure of the draft SL

Generally speaking, structure of the draft SL reflects to a certain degree the structure suggested by the Final Guidelines. However, certain parts of the draft SL dealing with the most important issues related to the securitization have not been sufficiently developed so far (e.g. taxation, bankruptcy remoteness, data protection).

In addition, in order for the draft SL to be more comprehensive and user-friendly, we would suggest certain regrouping of the articles within the draft SL (e.g. all provisions related to the securitized assets should be grouped together) and grouping of the related provisions in chapters.

In order to avoid any uncertainties as to interpretation of the law, we advise that the accepted terminology is consistently used throughout the draft law.

Regarding the secondary regulation mentioned in the Final Guidelines, it should be noted that the draft SL does not define the main principles and the issues to be subject to secondary regulation.

3.2 Definition of the securitization transactions

The definition of "securitization" given by the draft SL is wide enough to cover both true sale and synthetic securitization transactions.

The definition refers to the "transfer of **commercial** risk from the securitized assets" and it is our opinion that the definition should use the "transfer of the risk arising from or related to the securitized assets" without being unnecessarily explicit as to the nature of the risk being transferred.

Number of provisions dealing e.g. with the definition of the securitized assets, segregation thereof, statutory pledge over the securitized assets, etc. are drafted by having in mind the true-sale securitization and not taking into consideration specifics of the synthetic securitization. Namely, the draft SL is not consistent in taking into account synthetic securitization, where the segregation of the securitized assets occurs at the level of the originator and not the securitization undertaking.

3.3 Originator

Current definition refers to the originator as a legal entity disposing of its assets for the purpose of securitization. Having in mind the definition of the synthetic securitization, using "the transfer of the assets to the SPV" or "disposal of the assets" in the definition of the originator may be inconsistent with such definition.

3.4 SPVs – securitization companies and securitization funds

Generally speaking, the draft SL complies with the Final Guidelines regarding the types of the securitization undertakings. However, certain number of issues remained under-regulated and/or unclear.

Definition of the securitization undertaking could be interpreted as restrictive for transactions in which there would be two securitization undertakings, i.e. the acquisition SPV and the issuing SPV. As pointed out in the Final Guidelines (recognizing those are yet to be approved by the Steering Committee), there may be a number of reasons why a particular transaction would envisage having an SPV for the purchase of the securitized assets (or risks connected thereto) and a separate SPV to issue the asset-backed securities. These structures are normally used to isolate the risk and maximize the performance to the extent possible of each of the SPVs. We see no reasons why the Securitization Law should not envisage this structure as well (for example, for the purpose of applying the Croatian segregation / statutory lien rules upon an SPV incorporated in Croatia, but at the same time delegating the issuance of the securities in the international market to a specialized SPV incorporated abroad).

Article 8 paragraph 2 of the draft SL implies that (i) the securitization companies and the securitization funds could not participate in the synthetic securitization, and (ii) only originators could act as securitization undertaking in the synthetic securitization. Reasoning behind such restrictive approach remains unclear, and thus, in our opinion, should be amended in order to allow the securitization companies and the securitization funds to participate in any type of securitization transaction.

The draft SL does not adequately deal with the single-issuance and multi-issuance structures, as it prescribes that the securitization company could perform only one securitization at the time. It remains unclear what is actually meant by "one securitization at the time", i.e. does this mean that until the securities issued in the course of one securitization (and covered by one prospectus) are not repaid, the securitization company is not authorized to be engaged in another securitization. If that is the intended meaning of this provision, we believe this provision should be made more straightforward in order to avoid any doubts as the interpretation thereof.

Conditions under which the re-sale of the securitized assets and re-transfer of the transferred risk could be performed are not envisaged by the draft SL.

Regarding the licensing and supervision of the securitization undertakings (and other participants in the transactions), it is our opinion that the concept of the securitization register operated by the regulator, whereby the participants of the securitization transaction are registered and, following such registration, authorized to render particular services/provide relevant activities within the securitization structure (such as purchasing of the securitized assets in a true sale securitization, issuance of the securities, servicing of the securitized assets, etc.) without a need to go through any kind of prior licensing procedure

(with exception to the servicers not being banks or originators) would be welcomed by such participants and would actually be in line with the recommendation of the European Securitization Forum.

Currently only one article (Article 47) of the draft SL deals with the general principle according to which the securitization participants and securitization transactions are subject to the supervision of the regulator, with the aim to monitor whether the securitization participants continue to fulfill the prescribed requirements following their entry into the securitization register.

However, the draft SL does not contain requirements regarding e.g. approval of the management rules, supervision with respect to persons acting as management board members of the management company and supervisory board (if any), ordering of the audits of the fund and the company, reporting for statistical and supervisory purpose, etc, so as a consequence thereof it is unclear what would actually be the scope of potential supervision.

The LDT should develop additional, more detailed provisions related to the requirements, as well as supervision, measures and actions available to the regulator for ensuring compliance of the securitization participants with the SL and related secondary regulation (if applicable).

3.5 Assets

The securitized assets are defined as object of the securitization consisting of assets **or risks** arising from the assets in respect of which the securitization transaction is conducted. Such definition implies that the securitization assets are in each case the assets transferred to and owned by the SPV, while we believe this is not the case with synthetic securitization.

Namely, in case of the synthetic securitization, the securitized assets are e.g. receivables that remain owned by the originator and only the risks arising from such securitized assets are transferred to the SPV. Therefore, such "transferred risk" is not "securitized assets" as such term is commonly used by market participants. Instead, in synthetic securitization, securitized assets are the assets underlying the risk transferred to the SPV.

Regarding the segregation of assets by way of statutory pledge, it would be helpful if the draft SL would provide answers to the questions like: what would happen in case any third party acquires pledge over the securitized (segregated) assets of the SPV (e.g. contractual pledge) and enters such pledge in the registry held by FINA; what would be relation between the statutory, contractual and court pledge created over such assets; who would have statutory pledge over securitized assets in synthetic securitization; how would the statutory pledge become public and how would it be enforced. In addition, the draft SL prescribes certain technical details related to the segregation of the assets, including a requirement that the securitization undertaking is obliged upon request of the investors and fiduciary representative to issue a certified list of securitized assets, such assets being considered as "reliable document" (vjerodostojna isprava), but the draft SL does not further elaborate the meaning and purpose of such document.

Final Guidelines suggested the concept of the securitization register should be considered more closely, for the purpose of achieving isolation of the assigned assets from the legal reach of the originator and its creditors, making public the assignment of the assets with respect to the debtors and other interested parties and potentially achieving the registration of the transfer to the SPV of all ancillary rights attached to the assets without complying

with any additional formalities and registrations. Draft SL contains provision on securitization register but this concept as currently drafted is used for a completely different purpose.

Article 28 paragraph 3 of the draft SL prescribes that the list of transferred assets should contain **precise** data for identification of each part of the assets. We believe that this wording could imply that the assets transferred within the securitization transaction should be described in even more precise details than in case of any other assignment/transfer of assets. It is our opinion that, having in mind the size of securitization transactions and the scope of the assets usually transferred in this kind of transactions, the requirements for the description and identification of the assets subject to the securitization should be minimum so as to enable identification of the assets, i.e. without requiring unnecessary details of the assets (e.g. "all receivables due by the borrowers and arising from the mortgage loan agreements bearing identity number xxxx to yyyy executed in the period from 1 January 2003 and 31 December 2005", instead of listing name and surname of each borrower and date of execution and number of each mortgage loan agreement executed by the originator and the relevant borrowers in the same period).

3.6 Securities

With respect to the question raised by the LDT whether in case of securitization fund the investors would actually be unit-holders or holders of the debt securities issued by the fund or the management company, we believe that the law should envisage (i) option for the investors to invest in the units in the securitization fund, such units issued by the management company and (ii) option for the investors to invest in the debt securities issued by the management company on behalf of the securitization fund. Statute of each particular fund should contain rules about whether the units and/or the debt securities could be issued in respect of that particular fund, and the law should leave open to the market participants the choice of using the relevant securities. Units of the fund should explicitly be considered as securities, in line with Article 92 of the Investment Funds Act. Due to the lack of legal personality of the fund, we question the concept in which the fund would issue the securities directly.

We believe that the SL should not impose restrictions on type of securities to be issued in the securitization transactions by the securitization company.

The draft SL should be amended by adding provisions on the content of the prospectus related to the issued securities and the statute of the fund. Such provisions could be based on the corresponding provisions of the Investment Funds Act, taking into consideration particularities of the securitization transactions.

Depending on the views of the Steering Committee, the draft SL would have to be amended in order to contain provisions dealing with ratings of the securities.

3.7 Servicer

Regarding article 21 of the draft SL and having in mind the Final Guidelines, it would be advisable for the draft SL to prescribe that the regulator would be authorized to adopt secondary regulation prescribing terms and conditions under which other legal entities (apart from the originators and licensed credit institutions) would be able to obtain the regulator's approval for rendering servicing activities. That way the draft SL would not be in contradiction with demands of the market in case of possible future evolution of the servicing activities.

As pointed out in the Final Guidelines, having in mind views and practice of certain Croatian commercial courts and their judges that collection of the receivables of another person is considered as "providing legal services" and thus could only be done by the attorneys at law, we strongly suggest that the draft SL contains provision stating that the rendering th servicing activities (as a whole and any part thereof) shall not be considered as providing legal advise, if such services are rendered in accordance with the SL.

In addition to the banks, we would suggest the draft SL to provide a possibility that other "credit institutions" governed by special laws also provide servicing activities if envisaged by such laws.

On the basis of the Croatia Code of Obligations, the servicer as being mandated for the servicing activities would have a statutory pledge over collected funds. Having in mind that the investors would also have statutory pledge on the same funds on the basis of the SL, it would be necessary the draft SL to deal with this issue.

3.8 Bondholders' meeting and fiduciary representative

Pursuant to the Final Guidelines, the draft SL should prescribe that the bondholders' meeting and fiduciary representative protect interest of the holders of the debt securities issued by the securitization company and/or securitization fund management company. Securitization fund management company should act in the interest of the holders of the fund's units.

In addition, the draft SL should clearly prescribe that the statutory provisions about the bondholders' meeting and fiduciary representative apply, unless terms and conditions of the issued securities set out scope of their authorities, rights and obligations differently.

It is our opinion that at this stage the fiduciary representative should not be envisaged as a new type of professional in the financial sector, to be subject to e.g. certain specific licensing and supervision requirements and/or capital requirements. Instead, it seems reasonable to authorize e.g. the authorized companies as defined by the Securities Market Law to perform such activities.

3.9 Tax treatment

Article 49 of the draft SL contains single provision stating that "transfer of the securitized assets is not VAT taxable".

Having in mind a number of complex tax issues that could arise in the course of the securitization transaction, as indicated in the Final Guidelines, the draft SL does not sufficiently cover relevant tax aspects applicable to the securitization transactions.

Without attempting to be exhaustive, following are the questions to which the SL should provide explicit answers (i) is a transfer of risk and/or providing services of protection from the transferred risk in a synthetic securitization VAT taxable, (ii) could the payment of interest to the SPV become subject to VAT as a result of change of the creditor (e.g. SPV as a creditor of the loan receivables instead of a bank), (iii) could the payment of interest to the SPV become subject to withholding tax as a result of change of the creditor (e.g. foreign SPV as a creditor of the loan receivables instead of a bank), (iv) would a foreign SPV be considered to have a permanent establishment in Croatia as a result of e.g. holding securitized assets of Croatian origin, servicing of such assets by Croatian servicer, or similar.

3.10 Bankruptcy remoteness

Draft SL should be amended in order to contain features useful for achieving bankruptcy remoteness of the SPV, as proposed in the Final Guidelines. Examples of the provisions that should be included in the draft SL are as follows: limited recourse clauses (i.e. clauses whereby a source for payments of certain monetary claims of e.g. investors is limited to certain assets instead of the whole assets of the debtor (SPV)), prescribing conditions for the true-sale characterization of the assignment contract, encouraging unvoidability of arm's length assignment of receivables (including future receivables), i.e. ensuring that the transactions being in compliance with a definition of true sale assignment cannot be challenged by the originator's creditors or bankruptcy administrator unless they can demonstrate that the transaction was a fraudulent conveyance, 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/servicer (right of separation for the benefit of SPV), recognizing the right of the SPV to unilaterally change/terminate collection arrangements with originator/servicer immediately following the opening of bankruptcy procedure thereof, etc.

3.11 Scope of application of national law

Final Guidelines emphasized the need for the draft SL to contain explicit provisions allowing the transactions with one or several foreign elements, such as recognizing non-Croatian SPVs, issuance of the securities by Croatian SPV abroad, assignment agreement to be governed by foreign law, etc, as well to provide conflict of laws rules with respect to certain situations specific for the securitization transactions.

Current draft SL does not contain explicit provisions recognizing such foreign elements and situations. Moreover, certain provisions of the draft law could even be interpreted to imply non-recognition of such foreign elements.

For example, article 24 paragraph 2 of the draft SL envisages the registration of the securitization fund only together with the adoption of the regulator's resolution on approval of the asset backed securities' prospectus – it remains unclear what would happen if e.g. the Croatian securitization fund issues the securities abroad, in which case the regulator would not be in position to decide on approval of the prospectus. The same article of the draft SL envisages the registration of the servicer only together with the adoption of the regulator's resolution on approval of the asset backed securities' prospectus. Consequently, registration of the servicer and its authority to render services remain unclear in case of securitization of the assets of a Croatian originator where the securitization undertaking would be incorporated abroad and would issue securities also abroad so that the Croatian regulator would again not be in position to decide on the prospectus.

Article 28 of the draft SL prescribes that the transfer of the assets from the originator to the SPV is exercised on the basis of an agreement made in accordance with the SL, **general rules of law on obligations** and special provisions governing transfer of particular assets. This provision is ambiguous as it could be interpreted that the governing law for the transfer of assets has to be Croatian law. Namely, the law could prescribe obligatory contents of the agreement, but should not make impossible for the parties to agree on the foreign law to

govern the assignment agreement (provided this is possible under the general conflict of laws rules). In order to avoid such interpretation, this provision should be revised.

3.12 Data and consumers protection rules

We are of opinion that article 48 of the draft SL should be amended in order to prescribe that not only data about the securitized assets are subject to data secrecy rules, but also the data about the debtors of such assets.

Contrary to the Final Guidelines, the draft SL does not provide any provision that would adequately deal with the obstacles posed by the Consumers Protection Law (i.e. a requirement to obtain an explicit written approval of the consumer for transfer of the data) and the existing obstacles should be adequately removed by the draft SL.

3.13 Recharacterization risk

Draft SL should be amended in order to contain specific provisions on requirements for an assignment to be considered as a true-sale.

In the forthcoming period, the LDT will need to consult extensively with relevant Croatian Authorities with a view of taking a final position on various legal issues and drafting the final SL.

Kind regards,

Boris Porobija

Željka Rostaš Blažeković

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

Zagreb, 8 June 2007

Dear Sirs,

Report on the Draft Croatian Securitization Law dated 6 April 2007 (the Draft SL)

Introduction

The Steering Committee on its second meeting held on 22 December 2006 mandated Porobija & Porobija Law Firm (hereinafter: the Independent Legal Advisors or ILA) to prepare the opinion on the draft Croatian Securitization Law to be prepared by the appointed legal drafting team (hereinafter: the Legal Drafting Team or LDT) comprising of representatives appointed by the Ministry of Finance, the Croatian National Bank, the Croatian Agency for Supervision of Financial Services and the Croatian Banking Association.

In addition to the Final Guidelines for Drafting the Law on Securitization, please note that the Draft SL has been prepared also on the basis of (i) the report of the ILA dated 19 December 2006 containing ILA's comments the regarding the "0" draft Securitization Law prepared by the LDT, (ii) the comments on the "0" draft Securitization Law provided by KfW and (iii) a phase of intensive work of the LDT aimed to complete the draft law.

In fulfilling their task, the ILA reviewed the Draft SL, analyzed the provisions contained therein and produced this report containing their comments, views and recommendations related to the Draft SL.

This Report is structured so as to provide in respect of the main components of the Draft SL (a) a discussion of the harmonization of the principles actually incorporated in the Draft SL with the Final Guidelines (including to a certain extent the comments and the suggestions received from ESF and KfW) and (b) specific analysis on how to achieve greater compliance of Draft SL with the Final Guidelines, including an overview of more technical issues arising from the analysis of the Draft SL, highlighting the specific instances where the Draft SL departs from the Final Guidelines.

The Report also contains a summary table indicating the specific provisions of the Draft SL that, according to ILA views, require additional drafting, aimed to provide additional guidance to the LDT in the next phase of the legal drafting work.

We hope that by preparing this Report and by emphasizing (i) the technical issues that should be dealt with in the next draft SL and (ii) the principles and provisions contained in the Draft SL Law that may cause significant difficulties to the potential securitization participants in the future and thus may have negative impact to the actual benefit of the SL in practice, we have managed to contribute to adopting the Securitization law that would represent solid basis for the securitization transaction to be arranged in Croatia in the near future.

We are in the progress of updating the Final Drafting Guidelines to incorporate the LDT experience in drafting the law whenever we deem their choices to be consistent with the prior technical work. We believe that the Revised Final Drafting Guidelines are an important reference document for the authorities as the draft law starts its official approval procedure.

Kind regards,

Boris Porobija

Željka Rostaš Blažeković

Schedule

Overview of the compliance of the Draft SL with the Final Guidelines

1. Structure of the SL

1.1 General

Generally speaking, structure of the Draft SL has been very well organized, which makes the Draft SL user-friendly and the Draft SL deals with most of the issues listed in the Final Guidelines.

With respect to the scope and the concept of the SL as suggested by the Final Guidelines, the Draft SL differs from the principles contained in the Final Guidelines in a way that, inter alia, it does not mention the secondary regulation, and it may be useful that certain flexibility is allowed by the Draft SL in order to prevent the SL from becoming inflexible to market innovations. Nevertheless, as emphasized by the Final Guidelines, the SL should limit in scope such secondary regulation, by prescribing main principles and specific issues to be covered by such regulations. Secondary regulations would be very much welcomed particularly with respect to the regulatory capital treatment for financial institutions originators, and especially in circumstances of not having the Basel II Accord implemented in Croatia. In addition, it should be noted that the role and qualifications of the rating agencies are to be prescribed by the listing regulations of the relevant stock exchange. It would be advisable if a deadline for adopting such regulations would be defined or at least agreed between the relevant stakeholders.

1.2 Specific issues

We note that the Draft SL does not contain relevant provisions dealing with taxation, but we understand that despite the Final Guidelines, there has been a strong resistance of the tax authorities to the idea of the tax issues being prescribed by a non-tax regulation. In principle, we agree with such approach provided the relevant tax laws will be amended in order to deal with certain outstanding tax issues in an adequate way and/or the tax authorities will issue official opinion(s), where possible, thus providing potential securitization participants with necessary legal certainty. Non-exhaustive list of the outstanding tax issues was included in the ILA's report of December 19, 2006.

2. Terminology and Definitions

2.1 General

Proposed definition of the securitization and the types thereof mainly satisfy the principles contained in the Final Guidelines.

In order to avoid any possible uncertainties as to interpretation of the law, we advise that the accepted terminology is consistently used throughout the draft SL (e.g. securitization undertaking: article 29 paragraph 2; investors: article 43 paragraph 4, etc.).

2.2 Specific issues

Although the Final Guidelines suggested the provisions allowing the asset-backed commercial paper programmes should be included in the Draft SL, the LDT decided not to introduce the relevant provision in the Draft SL, but instead it decided to leave that to the amendments to the Securities Market Law. Therefore, at this stage it is not clear if and when such programmes would become available under Croatian law. It is our opinion that this and similar issues could have been dealt with by including a general provision in the Draft SL allowing such and similar structures and leaving the technical regulation, to the extent necessary, to the secondary legislation.

Definition of the securitized assets does not correspond to the way this definition is used in the context of other provisions of the Draft SL and thus we believe it should be revised in order to be in line with the following:

"*Securitized assets are assets subject to securitization and which are either (i) transferred in the course of the transaction or (ii) which are underlying assets for the credit and/or others risk or exposure that is being transferred in the course of transaction."*

or in Croatian:

"Sekuritizirana imovina je imovina u svezi s kojom se provodi sekuritizacija, bilo prijenosom same imovine, bilo prijenosom kreditnog i/ili drugog rizika odnosno izloženosti koji proizlaze iz sekuritizirane imovine."

As pointed out by KfW, the definition of the securitization transactions should not refer to the credit risk only, as that may allow for an interpretation that would preclude the transfer of other risks (e.g. interest or currency risk) relating to the holding of assets.

The current definition of the securitization undertakings refer only to the acquiring and disposing of the securitized assets, while it should also refer to the credit (and/or other) risks, in line with the definition of the securitization.

3. Securitization undertakings - Special Purpose Vehicle (SPV)

3.1 General

Draft SL follows the principles related to the form of the securitization undertakings as approved by the Steering Committee, and allows (a) participation of intermediary

SPVs (i.e. it envisages existence of both acquisition and issuing SPVs) and (b) multi-seller transactions (i.e. transactions whereby different originators would be involved).

Final Guidelines outlined briefly the main principles of the regulator's supervision of the SPVs and the SPV fund management companies. The Draft SL does not contain any provision dealing with that very important issue, and it is expected the next draft SL to be expended with the relevant provisions to be drafted by HANFA. The scope of supervision to be proposed could certainly have a great impact to the whole SPV concept, which potentially makes the drafting thereof a very sensitive issue.

3.2 Specific issues

Contrary to the Final Guidelines and suggestions of ESF and KfW, the Draft SL allows only single-issuance SPVs. Although we agree with the aforementioned suggestions that allowing the multi-issuance SPVs would have many benefits, the fact that the LDT decided not to follow those suggestions is not likely to result in any major difficulties for the potential securitization participants.

Despite the fact that the Final Guidelines suggested that the re-sale of the relevant pool of assets should be permitted under flexible conditions, the Draft SL provides rather restrictive requirements, argument for that being the infancy stage of the market and the importance of the investors' protection. We believe the requirements for the re-sale as currently envisaged should be made more flexible, and one of the reasons for that would actually be the investors' protection. That would particularly be the case in case the replacement or resale of the assets would be needed due to downgrade, default or inadequacy of the assets in order to prevent the deterioration of the assets or to generate a higher return for investors.

4. Assets

4.1 General

Draft SL basically accepted the main principles approved by the Steering Committee with respect to the securitization assets, but without actual removing potential restrictions related to certain types of assets that may be imposed by any other Croatian law. In other words, receivables and assets that cannot be assigned, transferred and pledged remain outside the scope of the Draft SL. Although this is contrary to the Final Guidelines and the recommendation of the ESF, we believe the view of the LDT that removing of potential restrictions could at the end result in substantial delay in passing of the SL due to a debate that may be caused by such approach, could be reasonably accepted and thus such inconsistency of the Draft SL with the Final Guidelines does not seem to raise material issues at this stage of the securitization market development.

4.2 Specific issues

In order for the Draft SL to be in line with the Final Guidelines, ILA's view is that the following provisions should be reconsidered and revised by the LDT because as currently drafted they impose restrictions that, pursuant to the opinion of ILA, could have negative impact to the securitization transactions without any actual need or justification:

a) Article 23 paragraph 1 of the Draft SL implies that the assignment agreement (related to the securitized assets) should be governed by Croatian law. We see no legal grounds for such provision, especially in cases where provisions of the Croatian conflict of laws rules allow the assignment agreement to be governed by foreign law (e.g. Croatian SPV entering into assignment agreement with a foreign originator related to the securitization of non-resident assets);

b) Article 23 paragraph 3 of the Draft SL prescribes that the assignment agreement has to contain the list of all securitized assets being transferred with precise data necessary for identification of each part thereof. That provision may imply that the assignment agreement should contain even more data about the transferred assets than it would be necessary under currently valid Croatian laws of general application. If such interpretation would prove to be correct and accepted in the practice, it would be very burdensome for the securitization transactions. Namely, for practical reasons and due to the fact that one securitization transaction could refer to thousands of contracts and related receivables, the SL should either be silent on this issue, or it should contain provision that would facilitate the securitization by imposing requirements related to identification of the assigned assets that would be as minimal as possible.

c) Article 28 paragraph 1 of the Draft SL implies that e.g. a mortgage granted as security for the payment of the receivables that form part of the securitized assets is considered to be transferred to the SPV only following the registration of the SPV as the mortgagee in the land registry, which is not correct. Namely, the transfer of the mortgage occurs *ex lege* with a transfer of the receivables, but such transfer would need to be registered in the land registry at the latest prior to the foreclosure over the relevant real estate;

d) Article 34 of the Draft SL deals with the satisfaction of the investors' claims from the securitized assets. It seems that this provision does not deal adequately with the satisfaction of those claims in case of synthetic securitization, in particular having in mind the issue of the definition of the "securitized assets" as currently drafted in the Draft SL.

e) Article 36 of the Draft SL introduces the segregation of the securitized assets, by way of creating the statutory pledge for the benefit of the investors. Creation of the statutory pledge over the securitized assets is also prescribed for the benefit of the servicer(s) for its(their) claims against the SPV for the due fees and costs. The ILA believe that the creditors other than the investors should be excluded from the

possibility to enforce their claims from the securitized assets and/or to have liens on such assets, because otherwise it could not be excluded that such creditors could, by starting the enforcement over the securitized assets, even actually "accelerate" the claims the investors have towards the SPV on the basis of the issued debt securities.

In addition, there are other issues closely related to the statutory pledge concept that may require additional drafting such as (i) limiting the possibility of each investor as the pledgee to start individual court procedures against the SPV and the pledged securitized assets, (ii) improving the status of the statutory pledgees in case of a need to start court procedure(s) in order to satisfy their claims from the proceeds of the securitized assets, (iii) protecting the status of statutory pledgees in case other court and/or notary public security interests would be created over the same securitized assets, etc.

5. Securities

5.1 General

Draft SL implies obligatory rating for the whole issue of the securities issued in the context of the securitization transaction in order for them to be listed in the first quotation of the Croatian stock exchange. This provision is contrary to the views presented in the Final Guidelines, as well as contrary to the recommendations of the ESF and KfW. Namely, imposing such mandatory requirement would result in significant increase of the transaction costs (due to the costs related to the rating procedure) and would certainly extend the time needed for completion of the securitization transaction. Moreover, it would make impossible listing in the first quotation of certain otherwise quality securities, simply because there would be e.g. so-called first loss piece tranche issued within such issue that would not be rated. In addition, there does not seem to be any valid reason for introducing such discriminatory elements applicable solely to the securitization securities. We would strongly suggest the said requirement to be removed for the securities issued in relation to the securitization transaction.

The Draft SL introduced a concept whereby the securities issued in the context of the securitization transaction undertaken by the securitization fund are issued by the securitization fund itself, although such securitization fund is not a legal entity. ILA believes such concept may cause certain difficulties and ambiguities and thus suggests that the Draft SL is amended by stating that the debt securities issued in the context of the securitization transaction undertaken by the securitization fund are issued by the securitization fund management company acting in the name of the management company and on behalf of the fund.

5.2 Specific issues

Article 44 paragraph 6 of the Draft SL contains a provision that provides the regulator with certain authorities that could be interpreted extremely extensive and that do not exist as such under other relevant laws and regulations dealing with the

securities/investment funds in general. Therefore, we would strongly recommend to delete this provision, in which case article 22 paragraph 5 of the SML would still apply to the securities issued in the course of securitization transaction, and as a consequence the regulator would have the usual authorities in that respect and thus the securities issued in the context of the securitization transaction would be subject to the same regime as any other debt securities.

Even in case the LDT would decide not to delete this provision, it should be revised in order at least not to be contradictory. Namely, in the first part of this provision refers to the circumstances that are commonly known and/or known to the regulator and the regulator has reliable evidence to prove such circumstances, while the second part of this provision refers to the circumstances that simply query (*dovode u sumnju*) e.g. business reputation of the originator, independence of the evaluator, or reputation and independence of the fiduciary representative. In addition, the ILA believe this provision as currently drafted may be considered as a source of legal uncertainty for the securitization transaction participants which should clearly be avoided as much as possible.

6. Servicer

6.1 General

Final Guidelines suggested that the servicing activity should be defined in its scope, however without implying that the SL should go into the actual technical details of performing such activity. In addition, that should qualify as a statutory basis for registration of such business activity in the court register. Namely, it seems the current practice of, at least some of, the court registers is not to allow registration of activities related to collection of receivables, including, but not limited to sending the reminders, encashment of securitized assets and security interest, etc. with argumentation that these activities are basically activities of providing legal services reserved to be rendered by the attorneys at law only. For that reason, the LDT may reconsider introducing the explicit provision differentiating the activities of the servicer from the legal services provided by the legal advisors.

In addition, since the servicers (in particular those not being the banks and/or the originators) would need to register servicing activities as its business activity with the court register, the description i.e. the scope of such servicing activities would need to be included in the SL. Such registration of the servicing activity in the court registry for a specific company would certainly not imply that such company would automatically be authorized to perform such activities without being registered in the securitization registry in accordance with the requirement of the SL.

6.2 Specific issues

Article 18 paragraph 3 of the Draft SL prescribes the requirements legal entity has to meet in order to be able to act as the servicer. One of the requirements is that the relevant person has actually been performing the relevant activities in the period of at least three years prior to execution of the servicing agreement with the

SPV. It is not clear how would the relevant entity prove that it meets this requirement and how should this provision actually be interpreted, i.e. would it be considered that any entity having its customers, sending the invoices thereto, sending them the reminders and starting the enforcement procedures against its defaulting clients would basically satisfy the aforementioned requirement if doing that for its own purposes in the period of at least three years prior to the execution of the servicing agreement with the SPV. It may be useful the LDT to expand the relevant provision by referring to the above remark.

In addition, the Draft SL does not answer to the question whether one servicer could provide this kind of services for the purpose of several securitization transactions.

7. Scope of application of national law

The most important incompliance of the principles incorporated in the Draft SL with the Final Guidelines and the explicit recommendations of the ESF, KfW and the ILA, derives from the fact that the Draft SL does not apply to any aspect of the securitization transactions involving non-Croatian SPV's, even if related to the resident securitized assets. We believe this principle is unacceptable both from the legal and practical perspective and may prove in future to have negative impact to development of securitization transactions in Croatia.

Namely, there does not seem to be any valid reason to treat two securitization transactions both of them involving e.g. (i) resident securitized assets and (ii) other resident securitization participants and investors, differently, merely because one securitization is performed by the non-resident SPV and the other by the resident SPV.

Certainly, in case of a non-resident SPV there would be a number of provisions of Croatian law (including the SL) that would not and should not apply for various reasons, but for a number of issues the SL, i.e. certain provisions thereof, should remain applicable.

By way of example, in case a non-resident SPV would securitize assets owned by Croatian originator (e.g. receivables owed by Croatian debtors) and would on the basis of such resident securitized assets decide to issue and list securities in Croatia in accordance with Croatian law, such securities would be governed solely by the Securities Market Law and not by special provisions of the SL. That would result in situation where (even if the securities and the issuer thereof would meet the requirements prescribed by the SML, which may be difficult in particular with respect to a requirement for the SPV to have financial reports for previous three years), the investors into such securities would be put in a different position (potentially more unfavorable) than the investors buying the securities also issued and listed in Croatia in the course of securitization transaction, but issued by the resident SPV (e.g. in case the foreign SPV would be involved, there would be no obligation for the securitized assets to be evaluated as prescribed by the SL, there would be no fiduciary representative, the investors would not be able to use the

benefit of certain provisions of the SL applicable in case of the originator's bankruptcy or the benefit of the statutory pledge for the benefit of investors, etc.).

In addition, as a consequence of such limited application of the SL, in case described above, any Croatian entity could act as the servicer of the Croatian securitized assets, as the SL would simply not apply to the securitization transactions where the SPV is a non-resident, even if all the other participants would be residents. The same would apply to e.g. the fiduciary representative.

8. Other issues

8.1 General

We understand that certain very important provisions dealing with the scope and procedure of HANFA's supervision of the securitization participants, as well as provisions dealing with liquidation of the securitization funds and the misdemeanors in general, are yet to be drafted and included in the next draft SL. Due to significance and impact those provisions may have to the contemplated structure of the SL, special attention of the LDT should be paid thereto in order for those provisions not to affect the compliance of other existing provisions of the Draft SL with the principles contained in the Final Guidelines (to the extent such principles have been incorporated in the Draft SL).

8.2 Specific issues

Consumers' Protection

In order to be in line with the Final Guidelines, ILA is of opinion that the Draft SL should adequately deal with the obstacle contained in Article 7 of the Consumers' Protection Law. Namely, the said provision prescribes that transfer of the personal data on consumers is prohibited without an explicit prior written approval of the relevant consumer. In order to avoid situation where the originator would have to request its debtors to provide explicit written approvals for transfer of the personal data to the SPV prior to the securitization, it would be extremely facilitating for the securitization transactions if the SL would contain a provision allowing the transfer of the data on consumers without explicit prior written approval thereof for such transfer, based on argumentation that the relevant securitization participants having access to the relevant data due to securitization are bound by the same data and secrecy rules as the originator, and that prohibition of transfer of such data should not actually affect the right to assign the relevant receivable which right to assign is otherwise unrestricted.

a. Table of provisions of the Draft SL that require additional drafting

	ARTICLES/TOPICS
Articles that require some change	3, 6, 9, 11, 13, 14, 16, 17, 20, 21, 23, 25, 26, 28, 29, 31, 32, 33, 35, 41, 43, 53, 55,
Articles that require substantial change	2, 19, 34, 36, 44, 45, 46, 50, 52, 58
Topics that require drafting of additional provisions	Secondary regulation Scope of application of the SL in case of multi jurisdiction elements involved Re-sale of assets Servicing activities; Conditions for other legal persons to act as the servicers Supervision by HANFA Statutory pledge over the securitized assets Derivatives in the context of the securitization Consumers' protection Liquidation of the SPV company Misdemeanors

June 2007

REVISED FINAL GUIDELINES FOR DRAFTING THE CROATIAN SECURITIZATION LAW

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A INTRODUCTION

Croatian Authorities and market participants acknowledge the benefits of having secure and transparent rules contained in a well-structured comprehensive regulatory framework, to introduce financial and legal practice use of securitization techniques into Croatia.

In order to facilitate the above, the Ministry of Finance has (i) established a Public-Private Steering Committee (hereinafter: the Steering Committee) chaired by Mr Ante Žigman, State Secretary for Finance and consisting of Mr. Zdenko Adrović, Croatian Banking Association, Chairman of the Executive Board, Mr. Davor Holjevac, Vicegovernor of the Croatian National Bank, Mr. Harald Huettenrauch, Vicepresident for Asset Securitization, KfW, Mr. Irakli Managadze, Senior Policy Advisor, EBRD, Mr. Luigi Passamonti, Head of the World Bank's Convergence Program and Mr. Ante Samodol, President of HANFA, and (ii) established a working group drawn from the private sector and consisting of Mr. Kurt Dittrich, Linklaters, Mr. Bojan Fras, Žurić i partneri and Fabrizio Maimeri, Italian Banking Association (hereinafter: the Legal Solutions Team) to assess the legal and regulatory requirements to undertake securitization transactions on Croatian assets, (iii) obtained an independent legal advice from Porobija & Porobija Law Firm (hereinafter: the Independent Legal Advisors) with respect to the preliminary due diligence performed by the Legal Solutions Team, (iv) discussed and approved the principles for drafting the relevant regulations, on the basis of inputs provided by the Legal Solutions Team and reviewed by the Independent Legal Advisors, (v) mandated the Independent Legal Advisors to prepare this Consultation Document as a basis for International Market Consultations and (vi) appointed the legal drafting team (hereinafter: the Legal Drafting Team) comprising of representatives appointed by the Ministry of Finance, the Croatian National Bank, the Croatian Agency for Supervision of Financial Services and the Croatian Banking Association, (vii) published the Securitization law Consultative Document and (viii) obtained a feedback from certain market participants with respect to the issues raised in the Consultative Document

Following the above actions, the Legal Drafting Team drafted and distributed to the Steering Committee and the Independent Legal Advisors, two successive drafts of Securitization Law and a separate document by which the Legal Drafting Team explained the variance between the Final Guidelines and the draft Securitization Law dated April 2007 in respect of certain issues. Independent Legal Advisors accepted explanation in respect of some of the relevant issues, while the rest of argumentation provided by the Legal Drafting Team seemed to be unacceptable in the opinion of the Independent Legal Advisors.

As a result of contemplation by the Independent Legal Advisors of the argumentation and additional solutions proposed by the Legal Drafting Team, the Independent Legal Advisors has revised the Final Guidelines as follows (hereinafter: the Revised Final Guidelines).

B PURPOSE OF THESE GUIDELINES

These Revised Final Guidelines for Steering Committee approval consists of (i) the principles approved by the Steering Committee on its meeting held on August 30, 2006, (ii) certain principles that are presented here as, among others, a result of the feedback from market participants to the issues raised in the Consultative Document and (iii) certain principles suggested by the Legal Drafting Team that have, in the opinion of the Independent Legal Advisors, been considered as acceptable and justified.

We recommend that the Legal Drafting Team provides a statement of compliance of the Draft Law with the Revised Final Guidelines, giving full justification for drafting decisions that may depart from the Revised Final Guidelines. It is understood that the Steering Committee will consider such draft law together with the statement of compliance, before it releases it to the Ministry of Finance for broader consultations by the relevant regulators.

C RESIDUAL ISSUES TO BE INCORPORATED IN THE DRAFT SECURITIZATION LAW

Following is a list of issues to be incorporated in the final draft Securitization Law:

1. List of issues to be subject to secondary regulation and the scope of such regulations;
2. Scope of application of the draft Securitization Law in case of non-resident elements are present;
3. Scope of supervision of the SPVs;
4. Provisions on winding-up of the SPV funds;
5. Provisions on misdeamenors and related penalties.

D FINAL GUIDELINES

1 STRUCTURE OF THE SECURITIZATION 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").

Securitization Law should define main principles, deal with certain very important issues [1]such as SPV structures, scope of supervision/licensing of SPV and SPV transactions (if any), servicing, data protection, bankruptcy remoteness to the extent necessary in order to facilitate the securitization transactions, assignment of future receivables, etc. and prescribe that a very limited scope of purely technical issues should be further elaborated by way of secondary regulations. In other words, the Law should take a rather high level principle approach to regulate the abovementioned issues to prevent the framework from becoming inflexible to market innovation. According to the European Securitization Forum (hereinafter: the ESF)[2], "the Luxembourg Law is generally praised as the best existing example in that regard".

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[1] While the law should ideally deal with taxes, in case that would not be an acceptable solution for this issue for any reason, it is extremely important that the Tax Administration issues an opinion/guidelines/Instruction in order to deal with certain outstanding tax issues in an adequate way, thus providing potential securitization participants with necessary legal certainty.

[2] ESF is a trade association comprised of 160 firms active in the securitization markets across Europe, including commercial and investment banks, investors, trustees, servicers, law firms, insurance companies, rating agencies, auditors, IT service providers and stock exchanges. The goal of the ESF is to promote the efficient growth and continued development of this market throughout Europe, and to advocate the positions, represent the interests, and serve the needs of our members. The ESF also undertakes initiatives designed to educate and inform external constituencies, including legislative and regulatory officials, the financial media, industry participants and others concerning the operation, importance and policy benefits of the securitization market and related activities throughout Europe

In order to avoid the proliferation of administrative measures that could generate confusion, in addition to defining the issues subject to secondary regulation, the Law should also, to the extent possible, define/limit the scope of that secondary regulation by defining main principles and the specific issues to be addressed thereby (such as e.g. regulatory capital treatment for financial institutions originators until the Basel II Accord is implemented in Croatia). In addition, to the extent secondary regulations would be envisaged by the draft Securitization Law, the draft should also prescribe a term by which such regulations should be adopted (e.g. a term for adoption by the relevant stock exchange of the listing regulations dealing with role and qualifications of the rating agencies).

To the extent tax issues relevant for the securitization transactions would not be included in the draft Securitization Law for any reason, it is essential that another appropriate way to deal with those issues is defined in parallel with drafting the Securitization Law (e.g. by adopting the amendments to the relevant tax laws in order to deal with certain outstanding tax issues in an adequate way and/or by issuing by the tax authorities of official opinion(s), where possible), thus providing potential securitization participants with necessary legal certainty

Also, as a mater of principle and to the extent possible, all issues to be prescribed should be included in the Securitization Law itself and not in various other laws, i.e. amendments to such laws (apart from the aforementioned tax issues). Namely, the latter strategy could easily result in discrepancies in wording and interpretation of such different laws, which could lead to further legal uncertainties.

Principle 1.1: Securitization Law should take a rather high level principle approach to regulate the relevant issues in order to prevent the framework from becoming inflexible to market innovation

Principle 1.2: Secondary regulation should be limited in scope and in line with main principles and the specific issues defined by the Securitization Law

2 DEFINITION OF SECURITIZATION TRANSACTION

Securitization Law should provide for a single definition of securitization that would cover securitization structures in which (i) an originator actually transfers a pool of assets that it owns (through a sale/assignment) to an arm's length special purpose vehicle which then issues securities that are based on the underlying (segregated) pool of assets and (ii) an originator retains legal ownership of the segregated pool of assets and transfers only the credit or other risk(s) associated with an underlying (segregated) pool of assets through the use of credit-linked notes or credit derivatives or by using a sub-participation scheme[3] in which the funds provided to the originator by the SPV by way of a loan would be repaid solely by the proceeds from the segregated pool of assets. The Law should make clear that the sole purpose of the SPV is to acquire pools of assets or risks from such assets and to channel the payments from the underlying assets to investors

Definition of securitization should provide for a clear distinction between the securitization transaction, on one hand, and factoring and/or asset sale, on the other hand.

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3 Sub-participation is a commonly accepted method of risk transfer in the securitization transactions. ILAs see no obstacle for the sub-participation method to be recognized in the context of the securitization, provided sub-participation agreement is entered into between the originator and the SPV.

The definition of the securitization should be such as to permit various securitization structures such as asset-backed commercial paper programmes[4], the master trust securitization schemes, etc., thus allowing structures with replenishment of assets and active pool management, however without excessive detailed regulation at the law level in order not to discourage market innovations.

Principle 2.1: Securitization Law should provide for a definition of the securitization wide enough to cover the synthetic and true sale securitization (including various securitization structures such as sub-participation, asset-backed commercial paper programmes, the master trust securitization schemes, etc.)

3 ORIGINATOR

As the securitization objectives (e.g. regulatory capital relief, financing, improving solvency or ratings, etc.) vary by type of originators, the Securitization Law should not exclude any legal person from being a potential originator of these types of transactions.

Principle 3.1: No legal entity should be excluded from being a potential originator of the securitization transactions

4 SPECIAL PURPOSE VEHICLE (SPV)

Securitization Law should provide for a Special Purpose Vehicle organized either as (i) a company or as (ii) a fund structure. Transaction participants should have the flexibility of choosing an appropriate legal structure for the SPV (between the said two structures) and a choice of the legal form should be neutral as to regulatory, tax, reporting, or any other kind of public intervention criteria.

In case of fund vehicle, this should be a specific Securitization Fund, regulated under Securitization Law to a reasonable extent. Securitization Fund regulation should use the concept of assets without legal personality (managed by the fund management company). Securitization fund management company's activities would have to be limited by reference to the purpose of such fund.

Neither the securitization companies nor securitization fund management companies should be subject to capital adequacy and minimal capital requirements. However, in order to protect investors and other participants against risks/losses arising from additional activities of the securitization companies and/or securitization fund management companies, their corporate objects and powers should also be limited to the activities necessary to effect the securitization transaction.

Activity limits are also important in case of re-sale of the relevant pool of assets. According to the ESF, the re-sale of the pool of assets should be permitted under flexible conditions, as it may become necessary in a particular transaction due to need to (i) replenish the pool of assets with new assets (in case of securitization of revolving receivables), (ii) enable the

4 LDT decided not to introduce the relevant provision allowing the asset-backed commercial paper programmes in the Draft SL, but instead it decided to leave that to the amendments to the Securities Market Law. It is the opinion of the ILAs that this and similar issues should be dealt with by including a general provision in the Draft SL allowing such and similar structures and leaving the technical issues, to the extent necessary, to the secondary legislation.

portfolio managers to re-sell the assets in order to prevent deterioration of the pool of assets or to generate a higher return for investors and thus to generally increase the investors' protection, and/or (iii) enable so-called clean-up calls e.g. in cases where due to the expenses of the transaction, such transaction is no longer viable.

Re-sell proceeds may be used e.g. for a re-investment in new assets and/or repayment to the investors, but should certainly not be managed in an investment fund manner.

Ability of the SPV to enter into hedging arrangements should not be denied, however the Legal drafting team should include a general provision dealing with the main purposes for which the entry into such hedging agreements would be allowed (e.g. for the purpose of ensuring predictability of payments under the issued securities, hedging with the purpose of limiting and/or minimizing various kinds of risks, and similar).

The Law should envisage the possibility of the originator to transfer the assets to a non-Croatian SPV. Non Croatian SPV would of course remain governed by the law of the place of its incorporation on corporate / bankruptcy / tax treatment matters. Please see also under item 11 below.

The SPV company should be able to issue all types of debt securities governed by Croatian law as well as any foreign law (where "foreign law" should clearly mean both (a) the law applicable to the securities *per se*, that is the law determining the form - physical, immobilized or dematerialized – of the securities, their validity and extinction requirements (also known as the issuance law) and (b) the law applicable to the terms and conditions underlying the purchase and repayment of the securities (otherwise known as contract law).

As far as the securities issued by the SPV fund are concerned, it should be made clear that such debt securities are issued by the securitization fund management company, acting in the name of the management company and on behalf of the fund.
Any type of SPV should have an addition to its name in the form of an abbreviation that identifies it as a securitization vehicle. Furthermore, the Law should not limit the use of other vehicles (e.g. trusts) that may become available in the future or, which is even more important, that are currently available abroad (in case of non Croatian SPV).

ESF recommended that the incorporation of the securitization SPV should not be subject to prior authorization from a regulator, although such model is followed in some European jurisdictions. However, the ESF believes that incorporation of the SPV fund's management company could be subject to prior approval from the securities regulator (i.e HANFA), as well as subject to a certain scope of supervision (i.e. approval of the constitutional documents of the management companies, management rules and persons managing those companies). Moreover, ESF is of opinion that establishment of fund and the issue of securitization bonds by the SPV company should, as being a capital market transactions, be subject to otherwise prescribed supervision.

It is our view that, in any way, SPVs and the SPV fund management company should not be subject to extensive regulator's supervision in a way e.g. HANFA supervises investment funds management companies, as the nature of the securitization transactions and in particular activities undertaken by the SPV and/or the SPV fund management company, and consequently the risks associated thereby, differ great deal from the risk attached to e.g. investment funds and their management companies.

Supervision of the SPVs and SPV fund management companies could extend to approval of the management rules, supervision with respect to persons acting as management board members of the management company, ordering of the audits of the fund and the company, reporting for statistical and supervisory purpose, etc.

In addition, the regulator should focus on fulfillment of requirements necessary for issuance of the securities (please see item 6 below) and incorporation of the fund(s), as capital market transaction.

As a conclusion, licensing and supervision procedure should be such as to not impose unreasonable burden and excessive limitations to SPVs and the SPV fund management companies.

The Law should provide for appropriate extension of the competences of HANFA having regard to the reasonable regulatory cost principle. In any event, licensing, limitation of representation of the SPV and supervision, if any, should not cause delays and/or increased costs in structuring and performing the transaction, as otherwise this would certainly lead to international market participants avoiding to use Croatian jurisdictions and Croatian SPVs for securitization transactions and would encourage the development the cross-border transactions.

Definite scope of licensing and supervision of the SPVs is subject to further consideration and decision of HANFA and the Legal Drafting Team.

Connected somewhat to the previous issue, the Securitization Law should also address the issue whether an SPV could be set up for a purpose of a “single-operation” or if a “multi-operations” SPV would also be allowed.

Namely, the Steering Commitee was of a view that both the SPV company and the SPV fund should be incorporated for the purpose of a single transaction, and the SPV fund management company should be allowed to incorporate and manage several funds, each fund serving for the purpose of one and only transaction.

It should be noted that the ESF emphasized that in most jurisdictions securitization SPVs are construed as multitransaction vehicles as such structures resulted with many benefits, such as (i) reduction of administrative and audit expenses derived from incorporating and operating SPVs, (ii) maximizing name recognition of the SPVs, and (iii) reducing the time to set up a transaction.

ESF pointed out that a principle of separate compartments is accepted in a number of jurisdictions whereby each compartment operates as a separate entity from the point of view of the securities holders, but all compartments together constitute a unity from the point of view of the SPV management. However, the ESF believes that the statutory pledge principle could also be used to the same effect.

It is our opinion as the independent legal advisors, that the Steering Commitee could consider two different options:

(i) introducing in the Securitization Law of the SPV company and SPV fund structure whereby:
(x) the SPV company would be a single operation entity not being subject to licensing and supervision requirements (only the issuance of the debt securities would be subject to the supervision as a capital market transaction); and
(y) the SPV fund management company would be subject to licensing and supervision and also be able to incorporate and operate more than one SPV fund (incorporation of each fund also being subject to the supervision);

or

(ii) envisaging in the Securitization law of the SPV company and SPV fund structure (managed by the SPV fund management company) whereby all those subject would be subject to the licensing and supervision of the regulator, but multi-issuance structures would also be allowed in case of the SPV company.

The Securitization Law should not restrict the existence of structures where several originators would assign their receivables to the same SPV.

The Securitization law should address the definition of the conflict of interests between different parties to the transaction, with the obligation to disclose such potential conflicts in the ABS prospectus.

With respect to the issue whether the securitization structures envisaging intermediary SPV should be allowed by the Securitization Law. The ESF recommends that the Securitization Law should not impose restrictions to using of intermediary SPV. Namely, there may be a number of reasons why a particular transaction would envisage having an SPV for the purchase of underlying assets (or risks connected thereto) and a separate SPV to issue the asset-backed securities. These structures are normally used to isolate the risk and maximize the performance to the extent possible of each of the SPVs. We see no reasons why the Securitization Law should not envisage this structure as well (for example, for the purpose of applying the Croatian segregation / statutory lien rules upon an SPV incorporated in Croatia, but at the same time delegating the issuance of the securities in the international market to a specialized SPV incorporated abroad).

Principle 4.1: SPV to be available in the form of a company and a special securitization fund subject to the management of the securitization fund management company

Principle 4.2: SPVs should not be subject to capital adequacy and minimal capital requirements, but rather to the prescribed activity limits

Principle 4.3: Non-Croatian SPV should also be recognized as parties in securitization transactions

Principle 4.4: Regulatory requirements should primarily focus on capital market part of the transaction, i.e. issuance of the securities and incorporation of a fund

Principle 4.5: Scope of licensing and supervision of the securitization transactions and the parties thereto should not impose unreasonable burden and excessive limitations to the transaction

5 ASSETS

Assets being object of securitization should be described in a way so as to not exclude any asset or pool of assets which can produce a recurring income stream and thus be a suitable candidate for securitization (receivables, real estates, whole business), provided that other laws do not prohibit the transfer of such assets..

The pool of securitized assets is to be reserved for satisfaction of claims by the owners of the securities (i.e. the investors). Claims of the other creditors of the SPV related to costs of the transaction should be excluded from the possibility of being satisfied from the pool of securitized assets, in order not to enable such creditors to start the enforcement over the securitized assets and thus even actually “accelerate” the claims the investors have towards

the SPV on the basis of the issued debt securities,. For this reason, the pool of securitized assets should be segregated from other assets of the SPV.

In case of SPV being a company, separation of the pool of assets should be achieved by statutory pledge over such pool for the benefit of the investors and (to the extent possible) the other creditors of the SPV related to the costs of the transaction (in each case excluding other creditors unrelated to the transaction).

Alternatively, contractual security interest could be created over such pool of assets. In both cases, the security interest could be held by the security trustee. On this alternative, please see, however, item 8 below.

In the case of a SPV incorporated as a fund, non-existence of legal personality of the fund and its separateness from the originator and management company, whereby the management company manages the fund but does not own it, should be sufficient to achieve segregation of the pool of assets.

When addressing the assets being appropriate for securitization, the main requirement should be that the relevant assets must be identified or be capable of being identified at the time the relevant assets come to existence, without imposing any additional requirements for such identification other than those already prescribed by the laws of general application.

In that respect, particular attention should be paid to the issue of future receivables. Draft law should contain a definition of future receivables, as well as provisions providing answers to the questions whether future flows constitute eligible collateral for a securitization and whether the sale of future receivables or future cash flows to the SPV could be enforced, especially following the insolvency of the originator.

Special attention should be paid to the status of the assignment of the future receivables from the perspective of the potential bankruptcy of the originator. It is recommended by the ESF that the approach introduced in the Luxembourg Law is followed in that respect and that consequently the Securitization Law explicitly prescribes that the assignment of future receivables would be effective upon coming into existence, notwithstanding the opening of a bankruptcy procedure or any similar procedure against the originator before the date on which the assigned receivables come into existence.

Under Croatian law, together with the assignment of the receivables, transfer of the collateral being of ancillary legal nature occurs as well. Having in mind the fact that registration thereof usually becomes an issue in case of the enforcement of the security interest or in case of the originator's bankruptcy, as well as the costs and time necessary for the registration, a concept of securitization register should be considered more closely.

Achieving the registration of the transfer to the SPV of all ancillary rights attached to the assets without complying with any additional formalities and registrations (land registry, registry of court and notary public's security interest, etc.) should be further analyzed. Alternatively, the LDT should consider to include in the draft Securitization Law a provision that would enable the SPV to start enforcement without undertaking otherwise necessary registration procedures, on the basis of the notarized agreement on transfer of the assigned receivables being an evidence of the authority to start the enforcement.

Principle 5.1: Securitization law should not exclude any assets otherwise suitable for securitization from being securitized

Principle 5.2: Securitization Law should provide for segregation of the securitized assets

Principle 5.3: Securitization Law should include special provisions related to the securitization of the future receivables

6 SECURITIES

The Securitization Law should not limit the types of debt securities that may be issued in securitization transactions.

Either special provisions in the Securitization Law or amendments to the Securities' Market Law should recognize issues in different tranches, each such tranche being subject to different terms and conditions. It should also be made explicit that a single prospectus would suffice for a single transaction, regardless of the tranching of the securities.

Provisions of the Securities Market Law regarding the approvals for issuing securities will apply to the securities issued under Croatian law in the course of securitization transaction (both in case of SPV company and fund). However, special provisions in the Securitization Law are necessary in order to adequately deal with specific information requirements characteristic for securitization (e.g. disclosure of potential conflicts of interests between the originator and the SPV; the SPV as issuing entity has no history of financial reports; etc.). In that respect, the stock exchange regulations will also need to be amended in order to address particularities of securitization transactions and it would be useful to define a term for that.

Securities should be subject to high, but reasonable disclosure standards, preferably in line with internationally accepted ones and thus the EU Prospectus Directive should be applied as a guiding principle. It is suggested that in case of a private offer of the securities made only to the institutional investors, there is no obligation to make the prospectus, unless one or more institutional investors subscribe and pay in all the securities of that issue, with the intention of offering them for sale to persons that are not institutional investors within a period shorter than one year. In the later case, the SPV would be obliged to file to HANFA the request for approval of the prospectus before the institutional investor starts offering securities for sale, and the institutional investor shall be obliged to make such prospectus available to potential customers before the sale. Alternatively, the issuance of the prospectus could be obligatory both in case of public and private placement, with introducing of the short form prospectus for the purpose of the private offer of the debt securities.

Participants to each securitization transaction should be able to decide whether or not the ABS should be rated, depending on the target investors. Contrary to the views of certain members of the Steering Committee that the ratings should be obligatory if the intention is to list the securities in the highest quotation market, ESF believes that this should not be the case, as in countries like France or Spain where the law imposed mandatory ratings, such obligation has been strongly contested by market participants. It seems reasonable that the Securitization law does not provide for any special provisions with respect to the ratings applicable to the securities issued under that law, but rather in that respect such securities should remain subject to the general provisions of the Securities Market Law and the relevant stock exchange rules.[5]

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[5] An earlier draft SL implied obligatory rating for the whole issue of the securities issued in the context of the securitization transaction in order for them to be listed in the first quotation of the Croatian stock exchange. This provision is contrary to the views presented in the Final Guidelines, as well as contrary to the recommendations of the ESF and KfW. Namely, imposing such mandatory requirement would result in significant increase of the transaction costs (due to the costs related to the rating procedure) and would

On the other hand, it would be advisable that the Securitization law prescribes special provisions imposing different requirements for listing of the securities issued in the securitization structure in the first quotation of the stock exchange comparing to those prescribed by the Securities Market Law (e.g. requirements related to the share capital of the issuer and the publication of the financial reports in at least three business years prior to the listing should not be applicable in the securitization structures, or otherwise the securities issued by the SPV in principle would not be acceptable for listing in the first quotation of the Croatian stock exchange). In that respect, as stated above, the stock exchange regulations will also need to be amended accordingly.

Profit Tax Law provides for a withholding tax on interest payable by Croatian payer to foreign payees. The said Law provides for an exception only with respect to the interest payable on bonds (corporate or state) held by foreign legal entities. Therefore, in order to avoid implicit preference for certain types of ABS, the said exemption should be extended to all types of securities issued under the Securitization Law.

Securities issued or marketed under a foreign law (see also item 5 above) would remain subject to the applicable issuance or contract law on any matters discussed above, such as disclosure, prospectus or rating requirements.

Principle 6.1: Securitization Law should provide special provisions dealing with certain issues relevant also in securitization transactions (one issue with several different tranches, disclosure standards, ratings, listing requirements, withholding tax)

7 SERVICER

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.

Securitization Law should provide a definition, i.e. a scope of servicing activities. Such provision would also be a legal basis for registration with the court register of the competent commercial court for providing such services.

Entities authorized to render servicing activities should be (i) licensed financial institutions and (ii) originators. The Law should provide that the originator is entitled to carry on all or any part of the servicing activities without being explicitly registered for providing thereof. The Law should allow the third parties to act as servicers provided they meet the requirements prescribed by the Securitization Law and/or the relevant secondary regulation.

The Law should provide for a possibility that some of the activities making part of the servicing activities are rendered by different service providers and that each service provider is authorized to render servicing activities for more than one SPV/securitization transaction.

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certainly extend the time needed for completion of the securitization transaction. Moreover, it would make impossible listing in the first quotation of certain otherwise quality securities, simply because there would be e.g. so-called first loss piece tranche issued within such issue that would not be rated. In addition, there does not seem to be any valid reason for introducing such discriminatory elements applicable solely to the securitization securities.

Taking into consideration the views and the court practice of certain court registers, it would also be useful for the Law to explicitly prescribe that rendering of any activities making part of the servicing activities would not qualify as providing legal advice.

In addition to above, it was also recommended by the ESF that the Croatian law should recognize servicers authorized in EU jurisdictions to render such activities in Croatia, such authority being postponed until the time Croatia becomes a member state of EU.

Offering circular or other relevant disclosure document should provide for sufficient details about the servicer and the contractual arrangements between the SPV and the servicer.

One of the noteworthy aspects of securitization transactions is certainly a commingling risk, i.e. a risk of not being able to differentiate between the servicer's financial funds arising from the securitization transaction (which funds are actually not servicer's but instead the servicer is obliged to transfer such funds to the SPV) and its other funds.

Securitization Law should provide for provisions being able to adequately mitigate such commingling risk. Relevant provisions should state 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 accounts only in accordance with the SPV's instructions. That way the SPV would have a right of separation (*izlučno pravo*) with respect to the collected amounts. To the extent necessary, any detailed regulations in that respect should be developed in the secondary regulations.

In order to enable the servicer by operation of law to enforce a claim and realize the security interest in its name and on behalf of the SPV, appropriate and explicit provisions to that effect should be included in the law.

Principle 7.1: Securitization law should prescribe a definition of the servicing activities

Principle 7.2: Originator, licensed financial institutions and other categories of eligible servicers (as prescribed by the Securitization Law and/or the subsequent secondary regulation) should be authorized to render servicing activities

Principle 7.3: Securitization Law should provide provisions appropriate to mitigate any commingling risk related to the servicers

8 BONDHOLDERS' MEETING/FIDUCIARY REPRESENTATIVE/SECURITY TRUSTEE

Given that the issuance of ABS is the principal activity of the SPV company, there is arguably a need to give to the ABS holders some control rights over the operations of such SPV. In order to provide such rights to the ABS holders, an organization thereof in a form of a bondholders' meeting and joint - fiduciary – representative, should be envisaged either by the amendments to the Securities Market Law or by the Securitization Law. Such provisions should prescribe at least a minimum scope of the authorities of a bondholders' meeting and a joint - fiduciary – representative, leaving other issues to be defined by the terms and conditions of the ABS.

As Croatian law does not recognize the concept of the trust and consequently of the security trustee, it is our view as the independent legal advisors that the initiative for ratification of the Hague convention on the law applicable to trusts and on their recognition that entered into

force on 1 January 1992 (which is an international private law convention whose ratification does not introduce *per se* the concept of trust in a legal system otherwise not recognizing such concept, but allows the recognition of a trust regulated abroad) and that has been ratified so far by, among others, Italy, France, Luxembourg, the Netherlands, UK, should considered by the relevant Croatian authorities..

Principle 8.1: Securitization law should contain provisions on the bondholders' meeting and joint (fiduciary) representative of the bondholders and their minimum scope of activities, leaving the other relevant issues to be defined by the terms and conditions of the relevant securities.

9 TAX TREATMENT

Certainty should be provided as to what type of taxes are payable by the originator, the SPV and the investors. Since multi-jurisdictional transactions create certain additional tax issues, those should be also considered by the Tax Administration and adequately addressed in the amendments to the relevant tax laws and regulations and/or in the official opinion(s) issued by the Tax Administration.

Among the issues that need to be considered and adequately regulated, are the following: withholding tax, VAT and permanent establishment issue triggered by a securitization transaction in general and as well as by involving a non-Croatian SPV in such transaction. In addition, it should be ensured that no transfer tax are payable on the transfer of the assets or the security to the SPV.

When considering the relevant tax issues, it should be taken into consideration that the securitization transactions are not tax motivated, they do not change the character of the original transaction between the originator and the debtor and they are construed to achieve fiscal transparency and neutrality.

Principle 9.1: Certainty as to the taxation issues arising in the course or as a result of the securitization transaction should be provided in an adequate manner, either through the law or a separate official opinion issued by the Tax Authorities.

10 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 should be one of priorities.

Although the insolvency of the SPV being a company is a rather remote possibility as securitizations are generally structured in a way to make this event very unlikely, the Securitization Law should address specific issues aiming at achieving the bankruptcy remoteness even more.

Bankruptcy of the SPV being a company could not be excluded as a possibility due to the fact that the Croatian Bankruptcy Law would apply thereto without any exception. However, the statutory lien of the ABS holders over the securitized assets, restrictions to be imposed on the SPV with respect to its scope of activities and certain contractual provisions (e.g.

limited recourse / no petition clauses, role of bondholders representative, etc.) minimize the need for legislative intervention regarding the bankruptcy of the SPV.

Croatian Law does not explicitly recognize limited recourse and no petition clauses. Having in mind the facts that such clauses are considered to be instruments for achieving bankruptcy remoteness of the SPV and that it is not free from doubts whether the Croatian law would consider such clauses to be valid and enforceable, the Legal Drafting Team should ensure that the validity and effectiveness of such clauses are explicitly acknowledged by the draft Law. In that respect, the Luxembourg securitization law may be a good example as to how to address this issue in the draft Securitization law.

Further bankruptcy remoteness of the SPV, especially in case of the bankruptcy of the originator and/or servicer could be achieved by e.g. prescribing conditions for the true-sale characterization of the assignment contract, encouraging unvoidability of arm's length assignment of receivables (including future receivables), i.e. ensuring that the transactions being in compliance with a definition of true sale assignment cannot be challenged by the originator's creditors or bankruptcy administrator unless they can demonstrate that the transaction was a fraudulent conveyance, 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/servicer (right of separation for the benefit of SPV), recognizing the right of the SPV to unilaterally change/terminate collection arrangements with originator/servicer immediately following the opening of bankruptcy procedure thereof, etc. In the event of securitization through credit derivatives or sub-participation scheme, bankruptcy remoteness would apply directly at the level of the originator through the exclusion from the bankruptcy estate of the underlying assets and related cash flows as a consequence of the statutory lien provision.

The above envisaged bankruptcy remoteness rules would apply to the relevant Croatian entities (whether originators, servicers, SPVs) as foreign entities would be subject to their applicable foreign bankruptcy law.

Principle 10.1: As a matter of priority, the Securitization Law should contain provisions adequate to achieve the maximum possible degree of bankruptcy remoteness of the SPV (including, but not limited to recognition of the limited recourse and no petition clauses, defining requirements for a true-sale characterization of the transactions, etc.)

11 SCOPE OF APPLICATION OF NATIONAL LAW

Multi-jurisdictional securitization transactions very often face significant legal barriers and/or legal uncertainties. In the context of the EU Single Financial Market, it could be expected that in a great deal of securitization transactions substantial foreign elements would be present, e.g. foreign SPV acquiring receivables due by domestic debtors, domestic SPV issuing securities abroad, domestic SPV acquiring receivables due by foreign debtors and contracting servicing arrangements with foreign servicer, etc. 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 (e.g. benefit of provisions related to statutory lien, taxation and bankruptcy remoteness, reporting for statistical and supervisory purpose, etc.), should be addressed in the Securitization Law. The Securitization Law must not be limited solely to the securitization transactions involving only Croatian SPV.

The extent of application of the Law should also be clear in transactions where foreign law would govern the assignment agreement and/or the securities would be issued abroad.

Therefore, it is strongly suggested (also by the ESF and KfW) that a special attention of the Legal Drafting Team is paid to the issue of applicable law in the context of various aspects of such multi-jurisdictional securitization transactions (including, but not limited to those mentioned above). In this respect, some guidelines (without pretending to be exhaustive) are given throughout the document on international private law matters connected with the issuance and marketing of securities, incorporation and bankruptcy of SPV companies and claw back rules.

Principle 11.1: Securitization Law should provide for a clear scope of its application in transactions containing one or more foreign elements

12 DATA AND CONSUMERS' PROTECTION RULES

Having in mind the existing provisions of Croatian law dealing with secrecy and data protection, in particular the Personal Data Protection Law and the Consumers' Protection Law, that would cause substantial problems to the securitization procedure, it is necessary that the Securitization Law address these issues in an adequate way.

Since the data and consumers' protection are particularly sensitive issues deserving considerable attention in the consulting and the drafting stage, it shall be of the essence for drafting the relevant provisions in the Securitization Law that the representatives of Data Protection Agency and Consumers' Protection authorities are deeply engaged in the forthcoming consultations and drafting.

As a matter of principle, the rights of the debtors of the sold receivables must be preserved and their legal position/rights must not change after a securitization is implemented. Decision whether or not, and if yes when, the originator and/or the SPV would inform the debtors of the sale and assignment should remain with the transaction participants. The Securitization Law should provide for a possibility of joint notification of debtors by means of e.g. public announcement in the Official Gazette and/or in the daily press. In order to facilitate the use of such notification and to avoid any legal uncertainty resulting therefrom, an explicit provision on legal consequences of such notification (i.e. legal consequences thereof should be the same as in case of notification sent to each debtor directly and separately) should be incorporated in the Securitization Law. Again, the data and consumers' protection issues would have to be adequately addressed in this context as well.

Principles of the EU data protection regulations and practice should be used as the guiding principles when addressing the data protection issues.

ESF recommends the simplest and the least costly way to deal with secrecy (including banking secrecy), data and consumers' protection issues and that is to include in the Securitization Law an explicit provision stating that the transfer of necessary personal data to the relevant transaction participants (e.g. servicer, rating agencies, advisors) would be allowed as such participants would be bound by the same secrecy and data protection obligations as the originator.

Principle 12.1: Rights of the debtors of the sold receivables must be preserved and their legal position/rights must not change after a securitization is implemented

Principle 12.2: The Securitization Law should provide for a possibility of joint notification of debtors by means of e.g. public announcement in the Official Gazette and/or in the daily press

Principle 12.3: The Securitization Law should implement principles of the EU data protection regulations and practice

13 RECHARACTERIZATION RISK

Recharacterization risk is one of the risks related to the securitization transactions.

Mitigation of such risk would adequately be achieved by (i) introducing into the draft Securitization law of a definition of the true sale securitization and/or of a provision stating that characterization thereof for accounting, tax or regulatory reporting purposes would not have impact to legal characterization of the true sale transactions, (ii) dealing with bankruptcy remoteness as mentioned herein and/or (iii) dealing with the recharacterization risk in other adequate way(s).

Principle 13.1: The Securitization Law should provide provisions adequate to mitigate recharacterization risk

14 OTHER ISSUES

Securitization Law should not specifically address the issues like: statutory limits on costs of securitization transaction, handling and allocating of the surplus cash flow received by the debtors of the assigned receivables, 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 (in cases where a variable interest rate is not linked to some benchmark rate (e.g. ZIBOR, EURIBOR), but is set according to interest rate policy of the originator (lender)) and the content of contracts of securitization transactions.

Having in mind the costs of securitization transactions, which are always substantial due to a complexity of the relevant structures, as well as other resources necessary for such transactions it is highly unlikely that the size of this kind of transactions would be small. Therefore, it does not seem reasonable to impose any statutory minimum size of transactions.

SECURITISATION ACT

SECTION I
GENERAL PROVISIONS

Subject of the Act
Article 1

This Act regulates the means of and conditions for the performance of securitisation, the rights and obligations of participants in the securitisation, the way of keeping and the contents of the securitisation registry, as well as other matters relevant for the performance and supervision of securitisation transactions.

Application of the Act
Article 2

This Act applies to securitisation performed by securitisation entities having their seat in the Republic of Croatia. Securitisation funds whose management company has been registered on the territory of the Republic of Croatia, regardless of where the securitised assets being managed are located, will be deemed to have their seat in the Republic of Croatia.

This Act applies to securitisation performed by foreign securitisation entities with respect to securitisation business performed in the Republic of Croatia.

This Act applies with respect to originators having their seat in the Republic of Croatia, even if all securitisation business is performed abroad. In such case, all provisions of this Act related to the debtors of transferred receivables will apply as well.

Terms
Article 3

Terms have the following meanings in this Act:

(a) *Securitisation* is a transaction or a set of legal transactions having a common economic goal realised by transfer of securitised assets from the originator onto the securitisation entity and/or transfer of credit risk from the securitised assets for the purpose of issuing securities or contracting derivatives.

(b) *Securitised assets* are the assets with respect to which the securitisation is performed.
(c) *Credit risk* denotes the risk of collection of securitised assets.
(d) *Regulator* is the Croatian Financial Services Supervisory Agency.
(e) *Investor* is the holder of a security issued by the securitisation entity or a credit risk derivative acquired pursuant to an agreement entered into with the securitisation entity.

Forms of securitisation
Article 4

The forms of securitisation are:

(a) Traditional securitisation – securitisation effected by transfer of the title to securitised assets from the originator onto the special purpose vehicle for the purpose of securities issue based on the transferred securitised assets, out of which no obligations arise for the originator;

(b) Synthetic securitisation – securitisation effected by issue of securities or by contracting guarantees or derivatives by the securitisation entity with the purpose of transferring credit risks arising for the originator under the securitised assets to the investors, whereby the securitised assets remain in the balance of the originator. In case of the synthetic securitisation, the same person can be both the originator and the securitisation entity.

Participants in the securitisation
Article 5

Participants in the securitisation are:

- Originators
- Securitisation entities
- Investors
- Servicers
- Sponsors
- Fiduciary representatives
- Other participants in the securitisation.

Securitised assets
Article 6

Securitised assets may be receivables in general, as well as entirety of similar receivables classified by type [class], source, time of creation and/or other common characteristics. Any other kind of assets or entirety of related assets classified by type [class], source, time of creation and/or other common characteristics can also constitute securitised assets.

Future receivables and future assets can also constitute securitised assets, provided they meet the requirements set forth in the previous paragraph hereof, as well as special requirements set forth by this Act with respect to the transfer thereof.

By way of derogation from paragraphs 2 and 3 hereof, receivables and assets that cannot be assigned and/or transferred and/or pledged in accordance with specific regulations cannot be securitised.

Supervision of securitisation transactions
Article 7

The regulator supervises the participants in the securitisation and securitisation transactions.

The supervision comprises measures and activities aimed at determining of whether the participants in securitisation meet the requirements for granting such rights after the entry into the securitisation registry or after issuing decision on the approval of prospectus.

The participant to the securitisation shall, after being delivered the decision on commencing the supervision procedure, allow the regulator to access its business premises, submit for inspection and deliver any requested documents and materials, give statements and declarations and secure other conditions required for conducting the supervision.

After having determined irregularities and/or cases of unlawfulness, the regulator shall order actions aiming at establishing lawfulness, i.e. it shall order measures provided by this Act.

By the order referred to in the preceding paragraph, the regulator shall determine the deadline for completing actions and delivery of evidence thereof.

After having determined irregularities and/or cases of unlawfulness, the regulator shall undertake one or several measures listed below:

1. order the elimination of determined irregularities and/or illegalities;

2. issue a public warning to the participant in the securitisation in which the irregularity and/or illegality has been determined;
3. forbid performance of securitisation transactions to individual participant in the securitisation;
4. submit appropriate reports against respective participant to the competent authorities;
5. publicly announce all measures adopted and penalties ordered in relation to the established irregularities and/or cases of unlawfulness.

SECTION II
PARTICIPANTS IN SECURITISATION

Originator
Article 8

Originator is a legal person disposing of its assets or the credit risk for the purposes of securitisation.

Any legal person may be an originator in regard to its present and/or future assets or credit risk it disposes of, except legal persons that pursuant to a specific regulation are not allowed to or those that dispose with the assets which pursuant to this Act or other regulation cannot be securitised, but only in regard to such assets.

Securitisation entities
Article 9

Securitisation entities are legal persons that by means of securitisation transactions acquire or dispose of securitised assets, based on which they issue securities or contract derivatives, i.e. perform only some of these transactions.

Securitisation entities can be:

(a) Special purpose vehicles for implementation of the securitisation which may be organised as:

- securitisation companies;
- securitisation funds;

(b) Originators, in case of synthetic securitisation, without participation of a special purpose vehicle.

Securitisation companies
Article 10

Securitisation companies are special purpose vehicles incorporated solely for the purpose of conducting securitisation, and can be incorporated as limited liability companies or joint stock companies.

The Company Act will apply to incorporation, organisation and operations of securitisation companies, unless otherwise provided by this Act.

Securitisation companies may perform only securitisation transactions and must in their incorporation acts specify and register with the company registry exclusively and explicitly the performance of securitisation transactions as their business activities.

A single securitisation company can perform only one securitisation at a time. For the purposes of this Act one securitisation shall mean a securitisation governed by one securities' issue prospectus or the same relevant characteristics of derivatives within the meaning of Article 46, paragraph 3 hereof, and it lasts from the moment of approval of the prospectus for the issue of securities issued for the purpose of securitisation to the settlement of liabilities against all investors, i.e. from the moment of contracting the derivatives to the settlement of all liabilities arising therefrom.

Securitisation funds
Article 11

Securitisation funds are special purpose vehicles for securitisation comprising securitised assets as separate assets without legal personality, organized and operating with a view to issue securities based on such assets, as provided by this Act.

Securitisation funds are organised and managed by securitisation fund management companies.

Securitisation fund management companies
Article 12

A securitisation fund management company is a limited liability company or a joint stock company incorporated solely for the purpose of incorporation, management and representation of securitisation funds.

Securitisation fund management companies may perform as their business activities and must in their incorporation acts specify and enter with the company registry exclusively and explicitly incorporation, management and representation of securitisation funds.

All share interests or shares in the securitisation fund management company are to be fully paid up in cash prior to registration of incorporation of the securitisation fund management company or increase of the share capital thereof with the court registry.

The Company Act will apply accordingly to incorporation, organisation and business operations of a securitisation fund management company, unless otherwise provided by this Act.

Formation of a securitisation fund
Article 13

The management company sets up a securitisation fund by the resolution on its formation and by passing of the fund's Articles.

The fund's Articles must contain the following provisions:

(a) name or company name of the fund and indication whether it is a securitisation fund,
(b) date of incorporation and duration of the fund,
(c) purpose of incorporation of the securitisation fund,
(d) description of the type of fund's assets, indication of their value and, in case of securitisation of future receivables or assets, the expected lowest and highest value of the fund's assets,
(e) indication that securities are issued on the basis of fund's assets,
(f) indication of the type of securities that will be issued,
(g) brief information about tax regulations applying to the fund, if relevant for the holder of a security issued on the basis of fund's assets,
(h) duration of the fiscal year,
(i) date of adoption of the Articles,
(j) data on the management company,
- company name, legal form, registered office of the management company and the location of the management, if not the same as the registered office, the number of approval by the regulator, as well as the date of incorporation and entry into the court registry,
- if the management company also manages other securitisation funds, the list of such funds,
- amount of the share capital of the management company,
(k) amount of the annual compensation, as well as the management and operation fees that the management company may charge to the fund,
(l) indication of location where semi-annual and annual statements or additional information about the fund can be obtained,
(m) the way of liquidation of the fund after the securitisation has been completed, i.e. specification of other circumstances resulting in liquidation of the fund and the way of distributions of assets of the fund in liquidation

remaining after settlement of receivables by the investors and other creditors.

The fund may begin its operations on the day of its registration with the securitisation registry.

The regulator's decision on approval of the securities' issue prospectus, of which the issuer is the securitisation fund, will have the significance of the decision on approval of formation of that securitisation fund.

Management and representation of securitisation funds
Article 14

Management and representation of securitisation funds includes all operations required and usually performed so as that securitisation funds could operate in compliance with the law and purpose for which they have been organised and in particular include:

(a) any legal transactions and relations with originator, investors, servicer and other participants to the securitisation;
(b) management of securitised assets and legal transactions regarding collection and value preservation thereof;
(c) supervision and instructions to all participants to the securitisation performing transactions for securitisation funds;
(d) operations regarding the issue, promotion and sale of securities issued in the securitisation process;
(e) relations with the regulator;
(f) administrative tasks (bookkeeping and making of financial reports, keeping of registry of issued securities, announcements and reports to the participants of the securitisation and other persons and bodies, payment of securities, etc.).

The securitisation fund management company represents the securitisation fund in all relations and transactions in its name and for the account of the securitisation fund; therefore, all rights and obligations related to the securitisation fund as the securitisation entity or as the special purpose vehicle pursuant to this Act will be exercised by the management company in its own name and on behalf of the securitisation fund.

The securitisation fund management company issues securities of securitisation funds in its name and on behalf of the securitisation fund managed by it.

One securitisation fund management company is entitled to manage several securitisation funds.

Composition of bodies of securitisation companies and securitisation fund management companies

Article 15

The management board of a securitisation company, as well as of the securitisation fund management company, must have at least two members, whereby one of them must have at least three years of experience on the leading positions in financial transactions.

The management board members of a securitisation company or a securitisation fund management company cannot include:

(a) persons legally sentenced for the criminal offence of causing bankruptcy, violation of the bookkeeping obligation, causing damage to creditors, inequitable preference of creditors, abuse in the bankruptcy proceedings, unauthorised disclosure or discovery of the trade or production secret, as well as fraud, until they have been deleted from the criminal records,
(b) persons that ceased to be members of a professional association due to the non-compliance with the rules of association, or persons whose license for performance of securities' transactions was revoked by the regulator or a relevant authorised body.

The regulator is entitled to take insight into the criminal records for the purpose of determining whether the requirements referred to in paragraph 2(a) of this Article have been met.

Company name of securitisation companies and securitisation fund management companies
Article 15a.

Company name and abbreviated company name of a securitisation company must, in addition to mandatory elements, indicate the words "*for securitisation*" as indication of the subject-matter of its business.

A company name of a securitisation fund management company must, in addition to mandatory elements, contain the words "*for management of securitisation funds*" as indication of the subject-matter of its business.

Only the securitisation companies and securitisation fund management companies may use the words or derivatives of the word »securitisation«, as well as other words indicating the performance of securitisation transactions, in their company names.

Operation of special purpose vehicles
Article 16

Special purpose vehicles have a duty to organise and perform their activities having in mind above all the principle of protection of investor's interests.

Special purpose vehicles are authorised to perform only securitisation related activities, i.e. transactions based on and in connection with agreements with other participants in the securitisation and the regulator.

Special purpose vehicles may not use securitised assets, either directly or indirectly, for performance of transactions creating benefit for the securitisation company outside transactions referred to in paragraph 2 hereof, i.e. for the account of the securitisation fund management company or for any kind of benefit for itself or its employees or any other purpose other than in favour of the securitised assets and the investors.

Transactions entered into by the special purpose vehicles contrary to paragraph 2 hereof are valid, but the creditors can not collect their receivables arising under such transactions from securitised assets, but only from the securitisation company's own assets, or own assets of the securitisation fund management company and only if such collection would not directly or indirectly lead to creation of grounds for bankruptcy of the special purpose vehicle.

Servicer
Article 17

Servicer is a legal person that may be authorised by the securitisation entity to perform operations of collection of securitised assets, sale of securitised assets, management and collection of collaterals, issue of certificates to the debtors on performance of obligations, payments to the investors and other operations in regard to securitised assets and securitisation.

Transactions which the servicer is authorised and obliged to perform and the scope of rights and obligations vested in it in connection to performance of those transactions are regulated by the agreement between the securitisation entity and the servicer.

The servicer can not be authorised to perform transactions which have by this Act been explicitly assigned into the competence of another participant in the securitisation.

The servicer authorised by the securitisation entity to perform the collection of securitised assets is also authorised to conduct enforcement proceedings for collection of such assets.

Several servicers can be authorised in one securitisation for the same or different operations.

Who can be a servicer
Article 18

A bank can be a servicer without a special approval by the regulator.

An originator may, without special approval by the regulator, be the servicer in respect of its own securitised assets or assets that have originated from its performance of permitted business activity.

Other legal persons can be servicers if they meet the following requirements:

- if they have the share capital in minimum amount of HRK 1.000.000,00;
- if prior to entry into the agreement with the securitisation entity, they have actually performed the transactions with which they will be entrusted;
- if in the their financial statements for the three preceding years they have not declared loss.

Relation between the servicer and other participants in the securitisation
Article 19

The servicer must deposit all amounts collected in connection with the performance of the mandate entrusted to it regarding performance of securitisation into a separate bank account of the securitisation entity, unless otherwise stipulated by the agreement between the securitisation entity and the servicer. If the mandate refers to assets different from money, the servicer must keep such assets separated in the most appropriate manner from its own assets. The separate bank account must be identified as the account for collection of securitised assets, while the assets different from money must be recorded and such a record has the character of a credible deed. The servicer must keep record of transactions regarding securitised assets, which must be separated from the records of its own transactions.

All payments collected by the servicer in connection to the performance of the mandate entrusted to it represent the assets of the securitisation entity and do not constitute the servicer's assets and the servicer's creditors may not conduct enforcement over those funds. The same applies to assets different from money which the servicer, within the meaning of the preceding paragraph, must separate and record.

The servicer must, immediately following the first invitation of the securitisation entity, to present to it the account of performed transactions and deliver whatever it has collected by performance of those transactions, and is also obliged following the first invitation of the securitisation entity to submit to it the report on the state of operations it has been entrusted with.

The manner of determination and payment of the fee and costs to the servicer are set forth by the agreement with the securitisation entity. Notwithstanding the general rules of obligations' law. unless the agreement between the securitisation entity and the servicer

provides otherwise, the servicer shall not have the statutory pledge over the amounts collected by performing the mandate of the securitisation entity or over its other assets.

The securitisation entity must deliver to or provide access to the servicer to all documents regarding the entrusted operations and is in particular obliged to supply it with appropriate powers of attorney for performance of entrusted activities in relation to third parties.

In relations with third parties and in respect of operations it has been entrusted with, the servicer is, within limits of its authorisation, an agent of the securitisation entity.

If due to the nature of the operations entrusted to the servicer, personal information regarding securitised assets is also transferred to it, the agreement with the servicer referred to in Article 17 must also contain the provisions regulating, within meaning of the regulations providing for protection of personal information, rights and obligations of the servicer as the subject performing operations in connection to processing of personal information.

The relation between the securitisation entity and the servicer is the relation under a mandate agreement, thus if this Act or the agreement do not provide otherwise, the rules of the Obligations Act referring to the mandate agreement will accordingly apply to their relation.

Sponsor
Article 20

A sponsor is a legal entity authorised for the performance of activities of an agent and/or patron of the securities issue according to the rules regulating the securities market, other than the originator, which may be appointed by the originator and the securitisation entity for the purposes of performing operations in connection to origination, organisation, structuring and management of the securitisation operations.

The relations regarding the appointment of the sponsor, transactions performed by it and its rights and obligations are provided for by the agreement.

The operations in regard to which the sponsor has been appointed and specification of its rights and obligations in regard to those operations must be included in the prospectus.

Investors' Assembly
Article 21

Investors can establish an assembly as a body for protection of their rights with respect to other participants in the securitisation.

The assembly is established by the investors of the same securities' issue constituting at least one half of the nominal value of such issue. Upon the establishment, each investor is entitled to participate in the work of the assembly. The assembly adopts the rules of procedure, a copy of which must be delivered to the regulator and the securitisation entity.

The assembly will decide on:

(a) change of the fiduciary representative, which decision is passed with majority of the votes cast in the presence of investors constituting at least one half of the nominal value of such issue;
(b) change of the special purpose vehicle or the securitisation fund management company, which decision is passed with majority of at least three quarters of total number of votes;

One security of the same issue and the same nominal value will give the right to one vote in the assembly.

The assembly decides on the change of the special purpose vehicle or the securitisation fund management company if there is an important reason to do so. Important reasons include in particular if the investor's right of settlement under the collection terms provided for by the prospectus is endangered by actions lying on the side of the special purpose vehicle or the securitisation fund management company, if the special purpose vehicle or the securitisation fund management company becomes incapable of performing the business activity due to the imposed protective measure and in other cases when it is evident that the special purpose vehicle or the securitisation fund management company will not be able to fulfil its obligations. The provisions of this act relating to transfer of securitised assets to another special purpose vehicle or the transfer of the securitisation fund to another securitisation management company apply to the decision of the assembly regarding change of the special purpose vehicle or the securitisation fund management company.

The invitation to the assembly is sent to the investors in accordance with the procedure provided by the assembly rules of procedure, at least [10] days prior to the session thereof. The fiduciary representative may not represent the investors in the assembly.

Fiduciary representative
Article 22

Fiduciary representative is a legal or natural person independent of other participants in the securitisation, appointed for the purposes of protection of the investor's interest in regard to other participants in the securitisation.

The fiduciary representative is appointed in the securities' issue prospectus. Upon subscription or purchase of the security it is deemed that the investors have accepted the appointment of the fiduciary representative.

One fiduciary representative represents all investors.

In addition to the authorities that are explicitly specified by this Act, the fiduciary representative has other authorities for the representation of investors specified by the issue prospectus or granted to him by the investors at the appointment in the investors' assembly.

The licensed auditors and lawyers as well as other persons meeting the conditions that might be provided by the regulator for performance of the activities of fiduciary representative may also act as fiduciary representatives. Fiduciary representatives must be registered with the Securitisation Registry.

SECTION III
SECURITISED ASSETS

Transfer of securitised assets or credit risk for the purpose of securitisation in general
Article 23

The transfer of securitised assets or credit risk from the originator to the special purpose vehicle for the purpose of securitisation effected pursuant to this Act is performed on the basis of an agreement entered into between them, which agreement has to be made in accordance with this Act and the special regulations regulating the relations with respect to the securitised assets.

The agreement referred to in the previous paragraph regulates the terms and conditions of securitisation, the means of evaluation of the securitised assets, the amount of compensation to be paid to the originator for the transfer of such assets or the credit risk, the deadline for the payment thereof, and other relations between the originator and the special purpose vehicle in respect of securitisation.

The transfer agreement has to contain the list of all securitised assets being transferred with information necessary for identification of each part thereof. The agreement on transfer of future securitised assets or the credit risk from the future securitised assets has to contain at least a designation of the type and class of assets being transferred and the time period within which the future assets have to be created in order to be considered transferred.

Transfer of receivables for the purpose of securitisation
Article 24

The receivables are transferred for the purpose of securitisation by their assignment from the originator to the special purpose vehicle pursuant to the agreement in accordance with the rules of the obligations law.

Transfer of future receivables for the purpose of securitisation
Article 25

The future receivables are receivables that have not been created at the moment of entry into the agreement on the transfer thereof, but are expected to be created in the future.

The future receivables can be transferred for the purpose of securitisation, provided that they come into existence and meet the requirements specified in Article 6 hereof that the receivables or assets normally have to meet in order to constitute securitised assets.

When the future receivables come into existence, in relation to the contractual parties of the transfer, investors that acquired the securities on the basis of securitisation of such future receivables, as well as in relation to third parties, the effects of the transfer agreement shall be considered created at the moment of entry into such agreement. The same particularly applies to the statutory pledge over securitised future receivables that the investor acquired by the purchase of securities issued on the basis of such future receivables.

What has been provided here for future receivables, applies accordingly to the securitisation of other future assets if such assets normally meet the requirements specified in Article 6 hereof.

Determination of value of the securitised assets
Article 26

The value of securitised assets must be determined by evaluation.

The evaluation is made by independent evaluator. For the purpose of application of this Act, auditors will be considered independent evaluators.

Originators and securitisation entities have a duty to present and make directly available to the independent evaluator all data and documents that could be of importance for or affect the evaluation of the securitised assets.

The evaluation is made on the basis of all presented data and documents referred to in the previous paragraph, as well as the information available to the evaluator which can objectively lead to the determination of a realistic and fair value of the securitised assets, such as the overview of data on volume, profit and yield thereof, or comparable types of

receivables or assets of the same originator or its market competitors during certain time period, disclosure of statistical data, etc.

The evaluation must be prepared in writing and finally signed by the independent evaluator and contain the following declaration made by the evaluator:

> "In our opinion and according to all information and data we dispose of, we declare that the value of securitised assets expressed in this evaluation represents a realistic and fair value thereof, as well as that this evaluation represents a complete and authentic account of all facts and circumstances relevant for the determination thereof, and that no facts that might affect the completeness and authenticity thereof have been omitted during the its preparation."

The identity of the evaluator, the evaluation of the securitised assets, as well as the summary thereof with indication of the method and basic data used for the evaluation have to be indicated in a prospectus or a short prospectus.

In case of a joint securitisation pursuant to Article 30 of this Act, the value of securitised assets of each originator participating in the securitisation will be determined by a unique evaluation by the same independent evaluator applying the same evaluation method.

Transfer of ancillary rights
Article 27

By virtue of conclusion of the agreement on the transfer of receivables between the originator and a special purpose vehicle, in accordance with the general rules on the transfer of ancillary rights, all ancillary rights such as the hypothecation, pledge, rights under the agreement with the guarantor and co-debtors, and any other rights that constitute security for each individual transferred receivable, as well as the right to interests, contractual penalty, and other ancillary rights are also transferred to the extent and in the manner regulated by special regulations, without special legal ground and the means of acquisition.

At the transfer of receivables, the originator has a duty to deliver to the special purpose vehicle for each transferred receivable all documents related to their existence, change and amount, as well as all documents relating to the security for the so transferred receivables.

Transfer of rights and performance of authorities relating to security over the real property
Article 28

The rights relating to security over the real property and authorities relating to security over the real property that pursuant to special regulations may be exercised only upon

entry into the land registry, shall be acquired and exercised by the special purpose vehicle pursuant to such special regulations.

The agreement on transfer of securitised assets will constitute a ground for registration of rights relating to the security over real property in favour of the special purpose vehicle, provided such agreement contains the data and meets the requirements of the special regulations.

The originator and the special purpose vehicle are authorised to stipulate that the requirements necessary for the registration of rights relating to the security over the real property with the land registry for transferred securitised assets will not be met simultaneously with the transfer of such assets to the special purpose vehicle, but later, i.e. only with respect to individual parts of such assets or in case of a need for enforcement against such security instruments.

If the agreement on transfer of securitised assets does not comply with special laws for the registration of rights to such security in favour of special purpose vehicle, the originator and the special purpose vehicle are entitled to stipulate by the agreement the conditions, the means and terms of the entry of rights related to the security over the real property with the land registry, as well as their rights and obligations with respect thereto.

Transfer of the title to real property as security
Article 29

Notwithstanding the rules regulating the enforcement, the transfer of the title to real property for the purpose of securing the receivables or other assets *(fiduciary ownership)* is permitted before the receivable being secured has become due, if the transfer is performed for the purpose of securitisation.

Upon settlement of the receivable transferred for the purpose of securitisation and secured by the fiduciary title to real property, the special purpose vehicle or its successor shall enable the return of the title to such real property to the original debtor or its successor.

For the purpose of fulfilling the obligation referred to in the previous paragraph, simultaneously with the entry into the transfer agreement between the originator and the special purpose vehicle the originator has a duty to deliver to the special purpose vehicle the documents necessary for the return of the title to the real property and entry of such title into the land registry in favour of the original debtors or their successors, after the transferred receivables have been settled, and in fact separately for each real property, the title to which was transferred for the purpose of securing the securitised assets.

The transfer of the fiduciary title to real property from the originator to a special purpose

vehicle within the framework of the securitisation and the return of such title to the debtor or its successor are not subject to taxation.

Transfer of assets for the purpose of joint securitisation
Article 30

Several originators may transfer their assets related by type, source, time of origin and/or other common characteristics to a single special purpose vehicle for the purpose of joint securitisation. In that case, each originator will enter into a separate agreement on transfer of the assets to the special purpose vehicle for the purpose of securitisation, whereby all originators together will enter into a joint securitisation agreement with the special purpose vehicle.

Transfer of securitised assets or a securitisation fund to another securitisation entity or another management company
Article 31

The securitised assets owned by the securitisation entity can be transferred in whole to another securitisation entity, but only together with an adequate change of the securities' issue prospectus approved by the regulator.

What applies to the transfer of securitised assets to another securitisation entity applies also to the transfer of a securitisation fund to another securitisation fund management company to be managed by it.

No change of the securities' issue prospectus or approval of the regulator will be needed for the transfer of securitised assets to another securitisation entity, i.e. for the transfer of a securitisation fund to another securitisation fund management company to be managed by it, if such transfer is specified by the securities' issue prospectus and if the deadline for transfer specified by the prospectus is less than 6 months upon the date of the securities issue.

Transfer in case of bankruptcy of the originator
Article 32

If a bankruptcy procedure is instituted against the originator upon entry into the agreement on transfer of the assets or credit risk for the purpose of securitisation, whereby the special purpose vehicle has made a counterperformance in favour of the originator pursuant to the transfer agreement or is willing to make it within 3 months upon the invitation of the bankruptcy court, the transfer of assets for the purpose of securitisation within the meaning of bankruptcy regulations will be considered a cash transaction that can be contested only on conditions specified by bankruptcy regulations

for contestation of such legal actions.

If, at the moment of institution of the bankruptcy procedure against the originator, the agreement on transfer of the assets or credit risk for the purpose of securitisation has not been fulfilled at all or in whole, the bankruptcy administrator has no choice, pursuant to the rules regulating the bankruptcy, with respect to the fulfilment of the remaining obligations of the originator under such agreement, but instead he has a duty to fulfil the agreement in whole instead of the bankruptcy debtor, as well as request the fulfilment of the remaining obligations under the agreement by the special purpose vehicle in such case.

If, in case referred to in the previous paragraph, the bankruptcy administrator is not able to fulfil all obligations of the originator under the transfer agreement, the special purpose vehicle or investors, if the originator is at the same time the securitisation entity, are authorised to request a compensation due to the non-fulfilment of the agreement as bankruptcy creditors.

Separation of securitised assets
Article 33

Securitisation entities are obliged to keep the securitised assets separate from their own assets.

Securitised assets comprising money must be kept in separate bank accounts that must be identified as accounts for securitised assets. In case of securitised assets other than money, they must be separated in the most appropriate manner and recorded, whereas a record of securitised assets certified by the signature of the legal representative and the seal of the special purpose vehicle has the character of a credible deed.

The securitisation entity has a duty to deliver to each investor, regulator and fiduciary representative at their request without delay a certified excerpt from the account balance of securitised assets with the banks, or a certified copy of the record of securitised assets other than money, updated on the date specified in the request.

A securitisation fund management company must keep the securitised assets of each securitisation fund it manages separate from the assets of other funds it manages and from its own assets, as set forth by this Article.

Securitisation entities must keep business records and records of transactions regarding securitised assets separately from the records of their own transactions and securitisation fund management companies must keep them separately from transactions of other funds.

The way of settlement from the securitised assets

Article 34

The securitised assets serve the purpose of settlement of investors' receivables under the securities issued by the securitisation entity, thus only receivables of investors based on the securities issued for the purpose of securitisation and the securitisation costs in the amount and for purposes specified by the securities' issue prospectus can be settled from the securitised assets.

The creditors of securitisation entity under operations regarding securitisation based on agreements entered into with the securitisation entity may collect their receivables either from the securitisation entity's own assets or from the securitised assets, but always in amount and in the manner provided for by the securities' issue prospectus.

All other receivables, the settlement of which is not provided for by the securities' issue prospectus within the meaning hereof, are settled from the securitisation entity's own assets.

If the securitisation entity is a securitisation fund, the assets of the management company will be considered the fund's own assets.

Restriction of costs
Article 35

The amount, purpose and the manner of settlement of costs of the securitisation specified by the securities' issue prospectus can be changed only by an adequate change of the prospectus for such issue. The regulator will approve such change of the prospectus if the following is attached to the request for a change:

(a) certified written consent of the fiduciary representative to the requested change of the prospectus,
(b) audited financial statements of the securitisation entity not older than 30 days from the submission of the request for a change of the prospectus, together with a separate disclosure of the new evaluation of the securitised assets, as well as an opinion indicating that the requested change of the amount, purpose and the way of settlement of costs will not affect the settlement of investor's receivables.

The costs of incorporation of the securitisation entity cannot be settled from the securitised assets.

Statutory pledge of the investor
Article 36

By purchase of the security issued for the purpose of securitisation and full payment of the price thereof, the investors obtain the statutory pledge over securitised assets in portion and amount as published in the securities' issue prospectus and if the prospectus does not contain provisions on the matter, in proportion to the nominal value of the security held by them in relation to the nominal value of the total issue of the respective securities.

The statutory pledge referred to in the preceding paragraph entitles the investors to collect their receivables against the special purpose vehicle as the issuer from the securitised assets, in case their receivables are not settled upon maturity.

Contractual interest
Article 37

If the debtors of transferred receivables have a duty to pay the contractual interest at the rate determined from time to time by the originator or a third party, the interest rate stipulated in this way will continue to apply after the transfer of receivables to the special purpose vehicle.

Collective notification to debtors
Article 38

The debtors of transferred receivables will be notified about the transfer in accordance with the general rules of the obligations' law.

If, upon the transfer of receivables for the purpose of securitisation, the originator continues to collect the transferred receivables for the securitisation entity pursuant to an agreement entered into with such entity, the duty to notify the debtor of the transferred receivables will be considered fulfilled if the notification about transfer is published in the Official Gazette and one daily newspaper published in the Republic of Croatia as a collective notification for all debtors of such transferred receivables.

The collective notification referred to in the previous paragraph will identify the transferred receivables according to the type, class, time of origin, amount and/or other common characteristics appropriate for their identification, without indication of data on individual debtors and receivables owed by them. By the collective notification, the debtors will be instructed to continue settling the transferred receivables to the originator. The debtors of receivables notified about the transfer by a collective notification will be considered notified about the transfer upon the expiry of 8 days from the notification date of the later of the two notifications referred to in paragraph 2 of this Article.

SECTION IV
SECURITIES ISSUE AND CONTRACTING OF DERIVATIVES

Securities issue
Article 39

The securitisation entity issues only the debt securities on the basis of the value of securitised assets.

Unless otherwise provided by this Act, the provisions regulating the securities market, as well as other provisions regulating the issue of corresponding types of securities will apply accordingly to the issue of securities by the securitisation entity.

Securities issue prospectus and short prospectus
Article 40

The securitisation entity is authorised to issue securities by a public bid and private offering.

When issuing the securities, the securitisation entity has the duty to publish the prospectus of the issue for a public bid, or a short issue prospectus for the private offering. Unless otherwise provided, whatever is regulated for the prospectus in this Act, applies accordingly to the short prospectus.

Obligatory contents of a prospectus
Article 41

A prospectus must contain the following:

(A) the data on securities that the prospectus refers to, as well as on the way and conditions of their issue:
   1. indication of the type and description of characteristics of securities, the total number thereof and the description of rights that such securities carry,
   2. date of opening and the duration of subscription and payment,
   3. the way and the place of subscription and payment,
   4. description of the way of distribution of securities if more than the quantity issued is subscribed,
   5. the name, registered office and business address of the issue agent,
   6. the name, registered office and business addresses of persons liable for obligations of the issuer related to a security,
   7. names and addresses of institutions through which the issuers settle the financial liabilities against the investors,
   8. the price or the way of determining the price of securities,

(B) the data on the originator of securitisation:

1. company name, registered office, business address, date of incorporation, legal form, the name of the court keeping the registry that it has been entered with, as well as the number (MBS) of entry into such registry,
2. the data on the assets and indebtedness, financial position, as well as the profit and loss for the last three years and for the current year, including the last quarter preceding the submission of the request for approval of the prospectus:

   (i) its own or consolidated financial statements in accordance with the accounting standards,

   (ii) name or company name of the person responsible for the audit of financial statements and, if such person refused to perform the audit or sign it, or included certain restrictions into the audit, such facts must be indicated together with the reasons that made such person do so,

(C) the data on securitisation entities (for securitisation funds also data on the management company):

1. company name, registered office, business address, date of incorporation, legal form, the name of the court keeping the registry that it has been entered with or that the securitisation fund management company has been entered with, as well as the number (MBS) of entry into such registry,
2. the list of founders of the securitisation entity with indication of shares in the share capital and voting rights in the assembly,
3. description of securitisation transactions it performed, or the list of securitisation funds managed by it,
4. the data on assets and indebtedness, financial position, as well as the profit and loss for the last three years and for the current year, including the last quarter preceding the submission of the request for approval of the prospectus, unless the securitisation entity has been in existence for a short time, i.e.:

   (i) its own or consolidated financial statements in accordance with the accounting standards,

   (ii) name or company name of the person responsible for the audit of financial statements and, if such person refused to perform the audit or sign it, or included certain restrictions into the audit, such facts must be indicated together with the reasons that made such person do so,
5. indication of risk factors it is exposed to, which can affect the exercise of rights arising from securities that the prospectus refers to and their price at the market, in particular the risk that certain debtors of securitised assets might fulfil their liabilities before maturity or might not fulfil them upon maturity,
6. the data on court or other disputes or other legal proceedings that could significantly affect its financial position,
7. the data on responsible persons of the securitisation entity.

(D) the data on securitised assets and participants in the securitisation:

1. description of securitised assets pursuant to Article 6 of the Act,
2. evaluation of securitised assets, the summary thereof, together with indication of the method and main data that were used during the evaluation,
3. the name or company name of the evaluator,
4. indication of the essentials-provisions of the agreement on transfer of securitised assets entered into between the originator and the special purpose vehicle
5. for servicers – company name, registered office, business address, date of incorporation, legal form, the name of the court keeping the registry that it has been entered with, as well as the number (MBS) of entry into such registry,
6. indication of the essentials-provisions of agreements entered into with servicers,
7. for sponsors – company name, registered office, business address, date of incorporation, legal form, the name of the court keeping the registry that it has been entered with, as well as the number (MBS) of entry into such registry,
8. indication of transactions with respect to which the sponsor was appointed, as well as the rights and obligations of the sponsor in relation to such transactions.

(E) special information important for the securitisation

1. elaboration of the investment policy in regard to the cash flow surplus,
2. the disclosure of all data about relations and circumstances that could lead to a conflict of interests between the participants in the securitisation, or responsible persons in those participants, as well as measures by which this will be prevented, in particular disclosures and restrictions related to:
   (i) major transactions between participants that are not related to securitisation,
   (ii) involvement of directors and members of the Supervisory Board of the securitisation entity in the ownership structure and voting rights of other participants in the securitisation or membership in their bodies and involvement of employees, directors and members of the Supervisory Board of other participants in the securitisation in the ownership structure and voting rights of the securitisation entity,
   (iii) the intention of purchase of issued securities included in the prospectus by directors and members of the Supervisory Board of the securitisation entity.
3. indication of the amount, purpose and method for the creditors of the securitisation entity in regard to the securitisation transactions to collect their receivables from the securitisation entity and restrictions to apply in that regard,

4. data on the fiduciary representative and its authorities,
5. indication of place and term in which the prospectus and documents attached to the request for approval of the prospectus can be reviewed.

(F) statement of the persons executing the prospectus, reading:
"According to our belief and to the best of our knowledge and information available to us, we declare that all data contained in this prospectus form a complete and true presentation of the assets and liabilities, profit and loss, financial situation, business operation and other facts referred in it in regard to the originator, securitisation entity and other participants in the securitisation and rights pertaining to the respective securities and that the facts that might affect completeness and truthfulness of this prospectus have not been omitted."

The following documents must be attached to the request for approval of the prospectus in the original or certified copy:

1. Agreement on transfer of securitised assets including all required attachments, except for the attachments, disclosure of which would be contrary to the data confidentiality rules.
2. Evaluation of the securitised assets.
3. Decision on appointment of the fiduciary representative, its general and contact information and its written statement on acceptance of the appointment.
4. Agreement with the servicer.
5. Evidence that the servicer referred to in Article 3 paragraph 3 meets the prescribed requirements.
6. Decision on establishing of the securitisation fund and the fund's Articles if the issuer of the securities is a securitisation fund.

The prospectus is executed by:

(a) the securitisation entity as the issuer and all its directors and members of the Supervisory Board or other corresponding bodies. It is sufficient that the prospectus be executed by one person authorised to represent the issuer or several persons authorised for joint representation if the prospectus states the reasons why the prospectus has not been executed by other members,
(b) statutory representative of the originator and the sponsor, if applicable.

If one or more persons have issued the guarantee or other security for fulfilment of the obligations arising from the securities included in the prospectus, the prospectus must, with respect to such persons, contain the data referred to in paragraph 1 item (B) hereof, and the conditions for the use of such security.

Obligatory contents of a short prospectus
Article 42

A short prospectus contains data referred to in Article 41, paragraph 1. item (A), item (B), indent 1, item (C), indents 1 and 2, item (D), indents 1 and 2, item (E), indents 3, 4 and 5,

item (F), whereby the data on assets and liabilities, financial situation and profit and loss of the respective participants in the securitisation refer only the preceding and the current year, including the latest quarter preceding filing of the application for the approval of the prospectus.

The short prospectus must in any other respect meet the requirements referred to in Article 41 of the Act.

Special clauses of the prospectus
Article 43

By a single issue prospectus it may be specified that the issuer issues the securities in several tranches, whereby each tranche provides the holder of securities with different rights, e.g. with respect to the price of security, interest it bears, the guaranteed yield, limitation of holder's right to the payment in certain cases, etc.

Tranches within the meaning of this Article also include the segments of credit risk, provided for by the agreement or the prospectus, whereby the situation of the investor in a specific segment includes a risk of loss different than the risk relating to the same amount of exposure in another segment, without respect to the possible collaterals provided by third parties in favour of the investor in any segment.

A prospectus can also specify that the receivables of certain investors or creditors of securitisation entities will fall due only after the receivables of other investors or creditors have been paid in whole, as well as that, until their receivables have fallen due, they will not be authorised to institute enforcement or other proceedings against securitisation entities for the purpose of collection of their receivables or a bankruptcy procedure against the securitisation entity.

A prospectus can specify that, if the securitised assets would not be sufficient for the payment upon maturity of the amounts that would be due to the holders of debt securities of the issuer in accordance with the prospectus, the holders would not be able to institute a bankruptcy procedure or enforcement against the issuer, if the securitised assets would still be sufficient for the settlement of their receivables in amount or percentage of the nominal value of such security specified in the prospectus.

Special rights or conditions related to the holders of different tranches of issues or to the receivables of individual investors have to be published in the prospectus.

Upon the purchase of a security, the prospectus of which contains special stipulations, the investors will be deemed to have accepted such special stipulations.

Approval of the prospectus
Article 44

The securitisation entity as the issuer of securities has a duty to submit to the regulator application for the approval of the prospectus or the short prospectus before the prospectus has been published or delivered to the investors. To the application, the securitisation entity must attach the prospectus, the decision on the securities issue, as well as other specified attachments by which the facts that have to be indicated in the prospectus pursuant to Articles 41 and 42 are substantiated.

The regulator acknowledges by a decision that the prospectus contains all data required by the law and that it may be published and with respect to the securitisation fund as the issuer, that the fund's Articles contain the provisions specified in Article 13, paragraph 2 hereof. The regulator shall not examine the accuracy and completeness of announcements made in the prospectus or a short prospectus, or the legality of the resolutions on the securities issue and the contents of other attachments.

The regulator will approve the prospectus by a decision, if all required attachments are attached to the application and if the prospectus and the Articles of the securitisation fund meet all requirements provided for by the preceding paragraph hereof.

The decision on the approval of the prospectus contains also decisions on entries with the securitisation registry referred to in Article 49, paragraph 2 hereof.

If the regulator fails to pass the decision by which the prospectus is approved or the application rejected within [60] days upon the receipt of a valid and complete application referred to in paragraph 1 hereof, the prospectus will be considered approved.

By way of derogation from the provisions contined in paragraphs 2 and 3 hereof, the regulator may refuse the application for approval of the prospectus if according to the facts contained in the prospectus or according to the common knowledge or if it is known to the regulator and it has reliable evidence in that respect, that the approval of the prospectus may endanger the market stability or the position of individual participants in such market, and in particulat if there is evidence:

- of irregularity of the originator's business operation,
- of the conflict of interest of the evaluator and/or fiduciary representative,
- of the withholding of disclosures in the prospectus regarding affiliation of the participants in the securitisation and the conflict of interest.

Listing of the securitisation securities on the stock exchange
Article 45

By way of derogation from the rules regulating the securities market, for the purposes of listing of the debt securities issued for securitisation into the first quotation of the stock exchange the rules on the share capital amount and issuer's reserves in the last financial year and publication and submitting of the issuer's financial reports for the minimum period of the last three financial years will not apply.

The debt securities issued for securitisation or individual tranches of issues of such securities may be listed into the first quotation on the stock exchange if the issue or the tranche of the issue has been awarded rating by one of the leading rating agencies.

The role and the qualifications of the rating agencies will be defined in greater detail by the stock exchange by the listing rules.

Upon listing of the securities issued for securitisation into the first quotation of the stock exchange, the securitisation entity will be obliged to act in accordance with its obligations which in regard to the issuer of securities listed with the stock exchange arise from the rules regulating securities market and in accordance with the rules of the stock exchange.

Contracting of derivatives
Article 46

The securitisation entity involved in a synthetic securitisation is authorised to contract derivatives or guarantees related to securitised assets.

Derivatives may be contracted only within the private offering.

Contracting derivatives in the framework of securitisation is not subject to issue of the prospectus within meaning of the Section of the Act, however the securitisation entity must inform in writing the potential investors on important characteristics of the derivative contracted, or derivative offered.

The provisions of the rules regulating the securities market, and relate to the derivatives in general, apply correspondingly to the derivatives transaction in the framework of the securitisation.

SECTION V
SECURITISATION REGISTRY

Securitisation registry
Article 47

The securitisation registry is kept for the purposes of uniform implementation of this Act and supervision of the securitisation transactions and the participants in the securitisation.

The securitisation registry is kept by the regulator.

By the rules, the regulator can specify in more detail the way and form of keeping the securitisation registry.

Data entered with the securitisation registry
Article 48

The following data will be entered with the securitisation registry in respect of each securitisation transaction:

(a) General data for all participants in the securitisation:
- name and registered office;
- date and name of the incorporation act, date of entry of incorporation into the court registry and registry number (MBS);
- names and family names and address of management board and supervisory board members and their dates of birth;
- date and number of decision on entry and indication of capacity in which it is entered.

(b) Special data for securitisation entities:
- date and number of the regulator's decision on approval of the securities' issue prospectus;
- names and dates of formation of all securitisation funds managed by a single securitisation fund management company;
- data of opening and closing of the liquidation of the special purpose vehicle, as well as the number and date of the decision on opening and closing of the liquidation.

All changes of data specified in the previous paragraph must be entered with the securitisation registry as well, whereby the participants in the securitisation have a duty to report them to the regulator for the purpose of entry immediately and within 5 days upon the occurrence of the change at the latest.

Application for entry into the securitisation registry
Article 49

The entry of the securitisation entity into the securitisation registry is conducted pursuant to the application to which the securitisation entities enclose the excerpt from the court registry not older than 7 days and the consolidated text of the incorporation act in original or certified copy:

The following participants in the securitisation are entered with the securitisation registry without a special application, simultaneously with passing of the decision on approval of the securities' issue prospectus in which they participate:

(a) securitisation funds;
(b) servicers;
(c) synthetic securitisation originators;
(d) fiduciary representatives.

Entry into the securitisation registry
Article 50

The decision on entry into the securitisation registry is passed by the regulator.

The decision on entry into the securitisation registry of participants in the securitization that are pursuant to Article 49 paragraph 2 hereof entered without a special application is passed as part of the decision on approval of the securities' issue prospectus regarding the issue in which they participate.

The decision on entry into the securitisation registry of the servicer being neither a bank nor an originator is passed in a special examination administrative proceeding in which the regulator determines whether the applicant meets the requirements set forth in Article 18 paragraph 3 hereof.

Effect of entry into the securitisation registry and the announcement of entry
Article 51

Participants in the securitisation that have to be entered with the securitisation registry can commence with the performance of the securitisation transactions only after they have been entered with the securitisation registry by the regulator.

The decision on entry into the securitisation registry will be published by the regulator in the "Official Gazette".

Deletion from the securitisation registry
Article 52

The regulator will delete from the securitisation registry:

(a) the securitisation entity:
- if it fails to commence its operation within two years from entry into the securitisation registry,
- if it applies for deletion from the securitisation registry pursuant to the decision on discontinuance of performance of securitisation operations or if liquidation proceedings have been validly completed over them,

(b) the servicer:
- if it fails to commence its operation within one year from entry into the securitisation registry,

(c) any participant in the securitisation entered with the securitisation registry:
- if it stops meeting requirements for the entry,
- if it is forbidden to operate pursuant to the decision of the regulator or any other body

(d) the individual entry – if the entry has been effected pursuant to untrue disclosures or documents or in other irregular way.

SECTION VI
SPECIAL PROVISIONS

Confidentiality
Article 53

All participants in the securitisation that learn something about the securitised assets, parts thereof or persons having rights and obligations in regard to such assets, or participants in the securitisation who enter into possession of documents related to such assets and persons, have to keep such information as a business secret in relation to third parties.

If special confidentiality provisions apply to certain types of securitised assets or originator of such assets, the other participants in the securitisation must apply such special confidentiality provisions in relation to third parties.

The transfer of information referred to in this Article is free among the participants in the securitisation.

Cash flow surplus
Article 54

The securitisation entity disposes of the cash flow surplus in accordance with the Cash Flow Surplus Investment Policy specified in the prospectus.

The Cash Flow Surplus Investment Policy must contain in particular the provisions on the principles of protection from risk (hedging). The cash flow surplus may not be invested into equity securities, company shares, real property or investment funds which are permitted to invest in such types of assets.

The accounting of the security entity
Article 55

For the purposes of classification of obliged persons within meaning of the accountancy regulations, the securitisation entities and separate property without legal personality in the securitisation funds are considered large obliged persons.

The securitisation entities must submit the revised annual financial statements within 15 days from adoption thereof to the fiduciary representative, who shall forward them to all investors or publish them, and inform all investors accordingly.

Liquidation of securitisation companies
Article 56

Securitisation companies and securitisation fund management companies conduct liquidation pursuant to the provisions of the Companies Act.

Liquidation of securitisation funds
Article 57

Securitisation funds are liquidated:
(a) by the decision of the management company, upon completion of the securitisation, or after they have fulfilled the purpose for which they were established,
(b) by the decision of the regulator,
(c) by the decision of the court,
(d) in other cases specified by the law or regulator's acts.

The liquidation of the securitisation fund will be conducted by the securitisation fund management company managing the securitisation fund being liquidated, as a liquidator. If the securitisation fund management company has been forbidden to operate or deleted from the securitisation registry, the liquidator will be appointed by the regulator.

Within seven days from the adoption of the decision on liquidation, or from the day of appointment of the securitisation fund liquidator, the liquidator will notify thereof the regulator, the fiduciary representative and all creditors of the securitisation fund.

During the liquidation procedure, the liquidator will conclude the transactions of the fund in progress, which had been entered into up to the date of adoption of the decision on liquidation, as well as collect the receivables and cash the fund's assets, and settle the claims of investors and other creditors that created up to the date of adoption of the decision on liquidation of the fund.

From the date of adoption of the decision on the liquidation, the securitisation fund under liquidation can perform only the activities related to the liquidation procedure.

The liquidator will deliver to the regulator final liquidation reports and the report on the conducted liquidation of the fund.

The remaining net value of the securitisation fund's assets will be distributed as specified by the fund's statute.

The regulator will adopt the rules specifying the procedure, costs and terms of liquidation of securitisation funds.

Exclusion of the application of regulations
Article 58

The provisions of laws governing the insurance shall not apply to the relations with respect to the synthetic securitisation.

Foreign business operation of the securitisation entity having its registered seat in the Republic of Croatia
Article 59

A securitisation entity having the registered seat in the Republic of Croatia is authorised to perform securitisation operations and issue securities for securitisation in foreign countries in compliance with the regulations in force in such countries.

In the event referred to in the preceding paragraph, the securitisation entity having the registered seat in the Republic Croatia must inform the regulator on its intention to perform securitisation operations in foreign countries at least three months prior to commencing performance of such activities, providing detailed description of type, value, duration and other characteristics of securitisation operations to be performed in a foreign country, as well as on a form of organisation in which such activities would be performed in a foreign country, if the special form of organisation is required pursuant to the regulations of such country, supplying all information on that organisation type that must be entered with the public registries.

The securitisation entity having the registered seat in the Republic of Croatia must immediately register with the regulator the securities' issue prospectus for securitisation approved by the regulation of a EU member country, whereby the regulator must acknowledge its effects as if it had been approved by the regulator itself and immediately and without any further formalities or requirements effect the entries with the securitisation registry that are normally effected pursuant to the regulator's decision on the approval of prospectus.

If the regulations of the country of the issue do not require a securities' issue prospectus, a domestic securitisation entity will be obliged to inform the regulator on its intention on issue thereof and submit any data on the issue required pursuant to this Act in regard to a short prospectus and the regulator will grant its approval to such issue and effect required entries with the registry if is deems that if it was an issue in Croatia, is would approve a short prospectus pursuant to the data submitted to it.

The regulator supervises the foreign countries operation of the securitisation entity having the registered seat in the Republic of Croatia and is in performance of the supervision obliged to request from the competent body of another country in which the securitisation entity operates to perform supervision of its operation if this would speed up and simplify the supervision procedure in accordance with the principles of efficiency, efficacy and timeliness.

SECTION VII
MISDEMEANOUR PROVISIONS
Article 60

Final provisions
Article 61

Impact Assessment and the Regulatory Design of Securitisation in Croatia

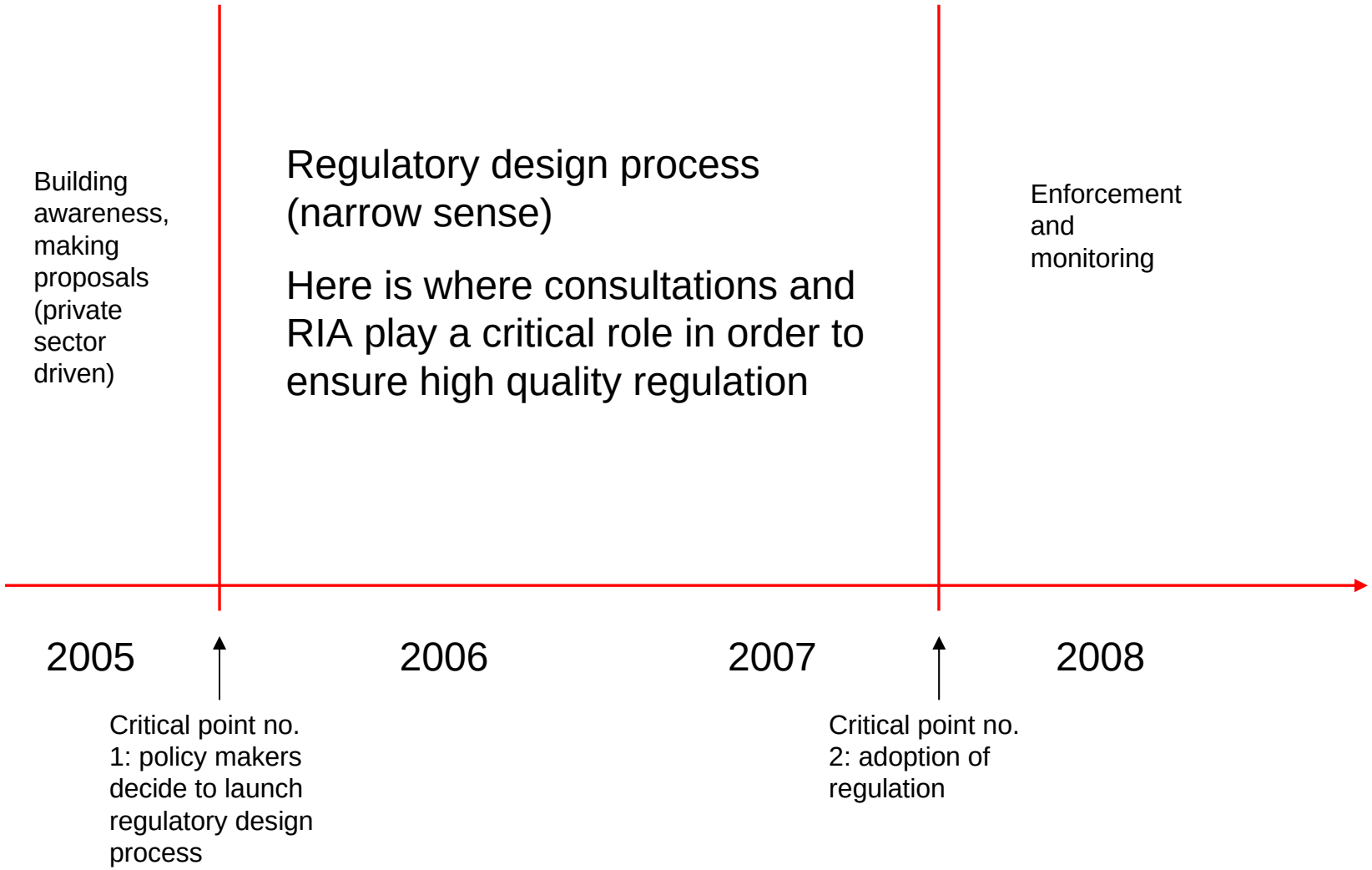
Velimir Šonje

Center for Excellence in Finance, Ljubljana, Slovenia
13 September 2007

Contents

- Introduction: time perspective, models of regulatory design and project organization
- What is Securitisation?
- Why regulation (introduction to RIA)?
- Role of RIA
- Pitfals and benefits

Time Perspective: Longer Than We're Used To



Models of regulatory design

Traditional

Top-down

Administration driven

- Bureaucratic spirit

- Reform spirit

Fast

Cheap

Adjusted Tradtional

Top-down

Administration driven

- Some consultation & dialogue

- Reform spirit

Slower

More expensive

Dialogue driven

Both directions

Driven by any stakeholder

- Based on consultations and dialogue

Slow

Expensive

Capture

Top-down

Interest group driven

- Lobbying, lack of transparency

- Corruption

Fast

Cheap

Project Development Steps in Croatia

20+ Key Events up to end 2006!

All of this happened without prior knowledge about RIA within administration and without any formal RIA framework

2nd Steering Committee Meeting

ILA Opinion on Zero Draft Law

Zero Draft Law

Draft RIA Issued

ILA Final Guidelines

Market Feedback

MoF Press Conference

ILA Draft Guidelines

ILA Consultative Document

1st Steering Committee Meeting

Independent Legal Advisor (ILA) Opinion

LSG Principles Issued

Legal Solution Group (LSG) Created (D,I&HR)

Convergence, EBRD, KfW meetings in Zagreb

Project Governance Structure Set-Up

Consultations with local regulators

MoF CBA Issue Exploration

Convergence- EBRD invitation

Working Group

First MoF-Convergence discussion

CBA Book Launch Endorsed by Authorities

Work on RIA →

CBA – Croatian Banking Association

MoF – Ministry of Finance

LSG – Legal Solutions Group

ILA – Independent Legal Advisor

Oct 05 Dec Jan 06 Apr May Jun Jul Aug Sep Oct Nov Dec 06

Project Development Steps

Key Events During 2007

Prior setup of the MoF working group (legal writing team) comprising representatives of the central bank, MoF, regulator and consultants

ILA issuing opinions on drafts

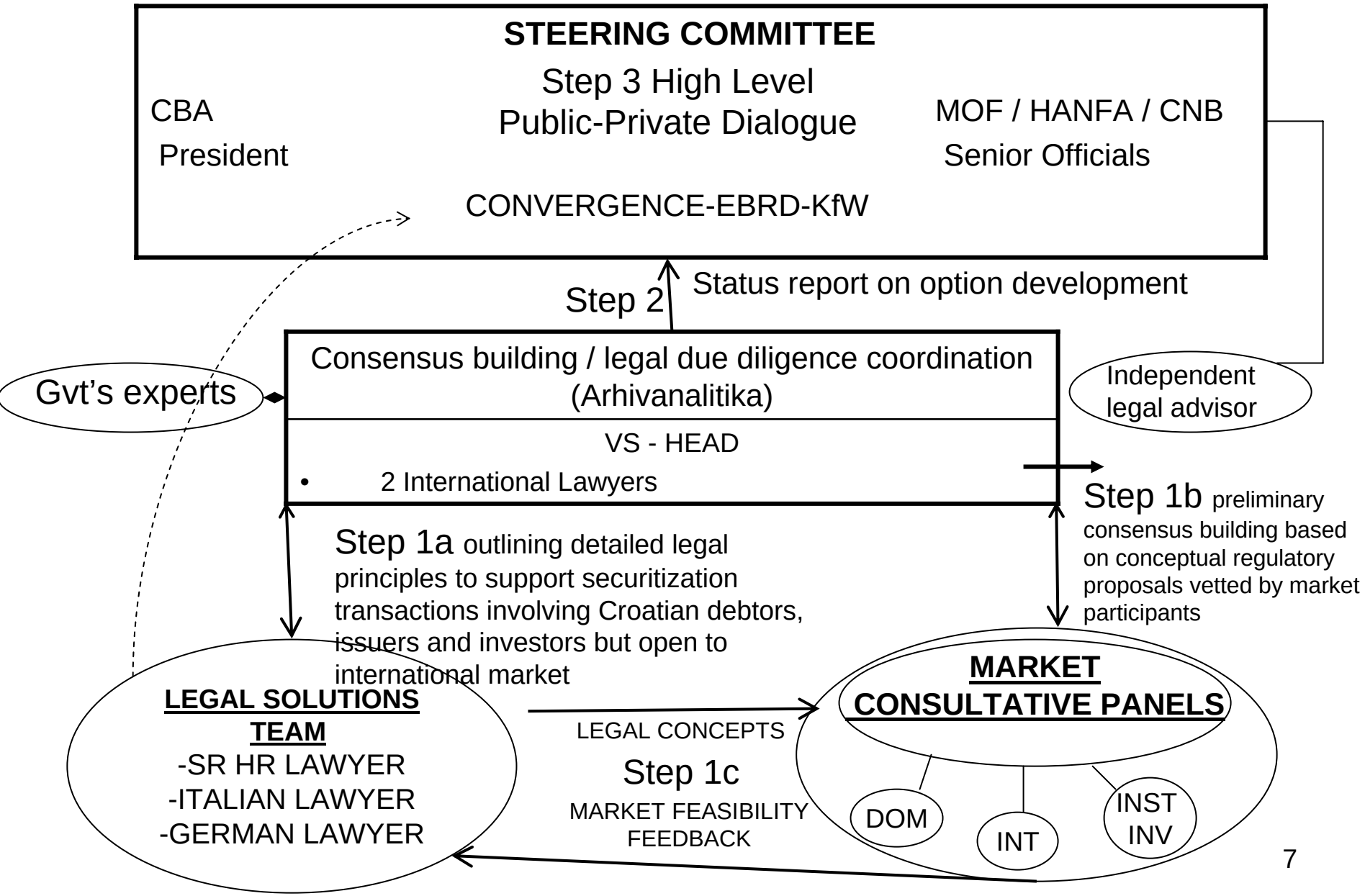
Official WG of the MoF producing several versions of the draft law

Final draft completed

How to conclude the process? Discussion in the end of presentation

Jan 07 Apr May Jun Jul Aug Sep Oct Nov Dec 07

Croatian Securitization Project Development Structure



Key Conceptual Issues
(issues that absorbed most resources)

- Broad understanding of benefits and pitfals (attach appropriate weight to PR activity)
- Ensuring quality (“best practice”)
- Ensuring “horizontal” consistency of regulation (key to enforcement)

Use of PR Within This Model

- Stakeholders' legitimate concern (not PR problem – has to be dealt with transparently through regulatory design process)
- PR has to make all stakeholders immune to the lack of information and knowledge

  - "Securitisation is a way to diminish monetary policy effectiveness"

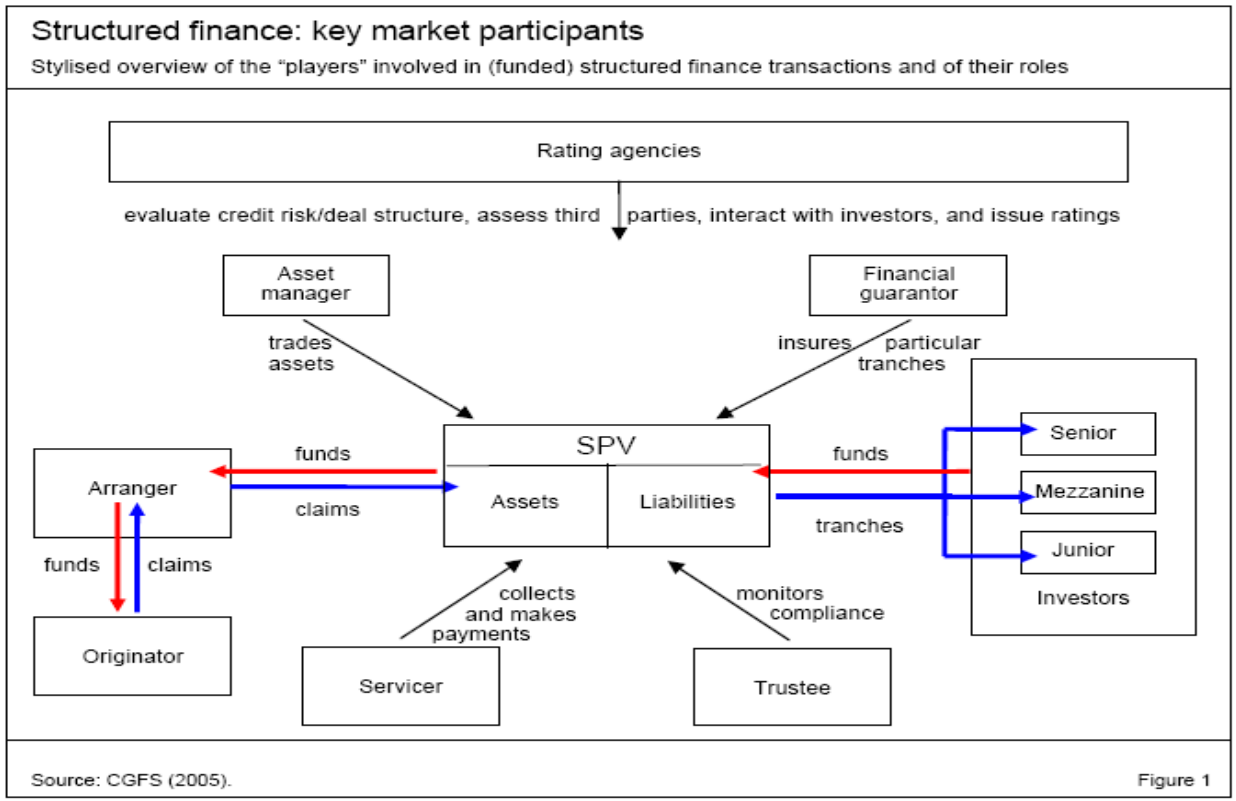
  - "Securitisation will diminish the legal rights of final debtors"

What is securitisation

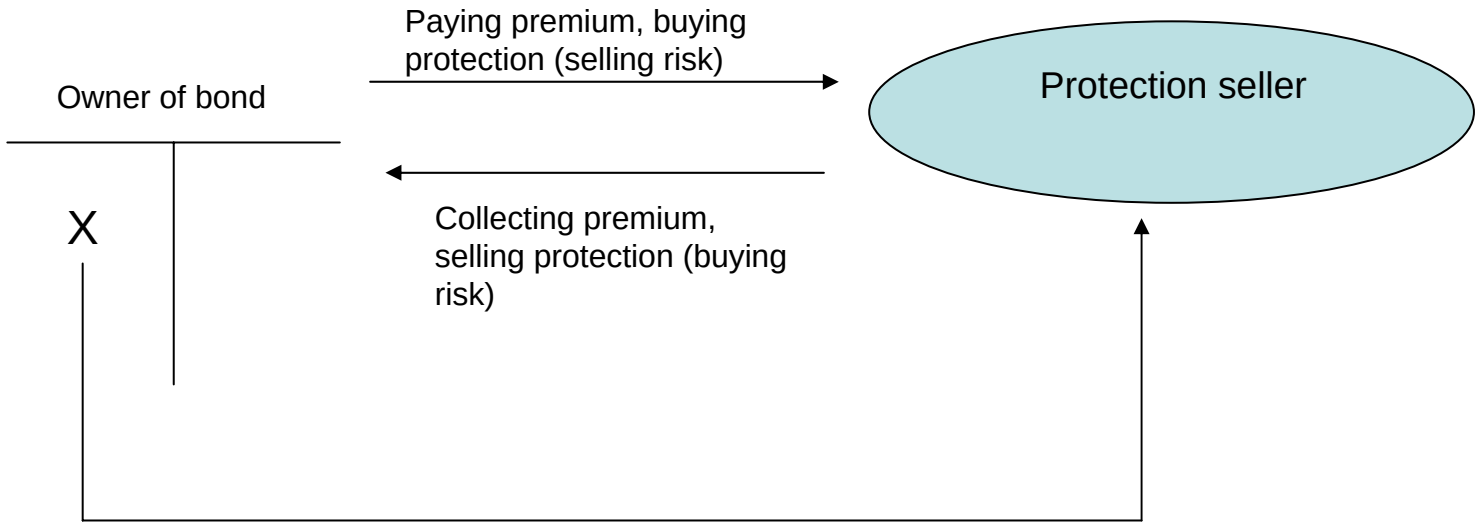
Securitisation belongs to a family of structured financial products. It consists of financing or re-financing of assets by re-packaging them into tradable, liquid form through issue of debt securities.

Traditional vs synthetic securitisation

Traditional securitisation scheme



Synthetic securitisation scheme



Bond transfered to protection seller at par value in the case of “credit event”

-Nonpayment of interest/principal

-Change of currency denomination

-Restructuring (changing coupon, term, “haircut”), etc

This is the logic of credit default swap

Why Regulation?

- Introduction to RIA
- Around 20 key issues identified by the CBA exploration team (this is the list of issues that will have to be assessed in terms of policy options)
- E.g. data secrecy, eligible assets, transfer of collateral, legal form of SPV, tax treatment, risk capital regulations etc.
- Listing key issues at an early stage of project development provides framework for thought and dialogue and helps find out werther regulatory effort is needed at all.

Developing Definitions and Options for Key Issues

Definition of key regulatory issues	Developing regulatory options	Option chosen with explanation
As early as possible. Impossible without consultations process starting at early stage.	Goes on throughout the process. Keeping it open-end as long as possible.	Strategic issues should be closed before final drafting process. Operational issues should be closed at the end of the legal drafting process.

Example (1 of 17 key issues)

What legal form can SPV take?

(issue at strategic level)

Option I

Company according to Company Law without additional provisions in the Securitization Law

Option II

Company according to Company Law with additional provisions in the Securitization Law

Option III

Securitization Fund with special provision in the Securitization Law

Options chosen:
II and III (let the market decide)

RIA in brief

- An aid, not a substitute for decision making
- Reflecting main benefits and costs/pitfalls from the perspectives of all stakeholders
- Using maximum possible quantifications
- Reflecting possible regulatory options
- Open-ended document to be supplemented by analytical work of all parties involved

Stakeholders' Perspectives Households

+

- Borrowing at more favourable terms
- Lower volatility of supply of new loans and leasing (long-run)
- In general, more stable access to finance at better terms

-

- Lower incentives to monitor final borrowers (SPV's incentives problem)
- Changing legal position of final borrowers needs to be prevented

Stakeholders' Perspectives Corporate Sector incl. SMEs

+

- New funding instrument
- More stable access to finance at better terms
- New potential channel for public (IFI's) intervention to support SMEs lending

-

- Lower incentives to monitor final borrowers (SPV's incentives problem)
- Changing legal position of final borrowers needs to be prevented

Stakeholders' Perspectives
Banks and Other Intermediaries

+

- Improvement in management of liquidity, capital and A/L structure in general
- Diversification of credit risk
- Reduced volatility of earnings

-

- Banks buying equity (high risk) tranches expose themselves to macro risks
- Changing legal position of final borrowers needs to be prevented

Stakeholders' Perspectives Domestic Investors

+	-
• New oportunity to generate returns on investment • New opportunity to diversify risks • Especially related to pension funds	0

Stakeholders' Perspectives Foreign Investors

+	-
• New oportunity to generate returns on investment • New opportunity to diversify risks	0

Stakeholders' Perspectives HANFA / MoF

+	-
• More precise pricing of debt (increased market efficiency) • New funding instrument for public sector projects • Further integration with EU single financial market • Retaining degree of control over transactions after full liberalization of capital flows	• Required resources

Stakeholders' Perspectives Croatian National Bank

+

MICRO

- Improvement in liquidity management
- Increased stability of banks
- Improved early warning signals

MACRO

- Stronger links between domestic savings with domestic credit growth and investment

-

- Unsustainable growth of foreign debt

Results of Survey of Potential Originators

Type	Assets estimated by respondents as presently suitable for securitization EUR mln	Expected transactions EUR mln								
		Year 1			Year 2			Year 3		
		No. of trans.	o/w cross border	Total amount	No. of trans.	o/w cross border	Total amount	No. of trans.	o/w cross border	Total amount
Mortgage loans	4 719	4	0	700	6	2	1 300	7	2	1 350
Car loans	927	0	0	0	1	1	50	1	1	50
Leasing portfolio	395	0	0	0	3	0	50	3	0	60
Other	733	0	0	0	0	0	0	1	1	100
TOTAL	**6 774**	**4**	**0**	**700**	**10**	**3**	**1 400**	**12**	**4**	**1 560**
memo: synthetic				80			70			50
Avg amount of true sales transact.				175			127			120
Avg amount of MBS				175			217			193

Domestic Demand Estimate

	Year 1	Year 2	Year 3	Year 4
n rate of AUM - pension	30%	26%	23%	20%
n rate of AUM – investment	35%	30%	26%	22%
tion in % of AUM as ted by respondents	2,5%-5%	4%-5%	5%-6%	assumed the same as Year 3
nd estimate (EUR mn)	**202**	**412**	**571**	**714**
banks	**100**	**120**	**140**	**160**
funds	**102**	**282**	**431**	**554**
ds' allocation as % of AUM	**2.5%**	**5.4%**	**6.5%**	**6.9%**
l increase in funds' ion as % of annual increase l AUM	**10.0%**	**16.4%**	**10.6%**	**8.8%**
ggregate demand estimate mn) after 20% correction n-responded demand te	**242**	**484**	**675**	**857**

Scenario A Based on Expert Assessment of Likely Developments and Scenario B based on Survey

EUR million		2007	2008	2009	2010
	SCENARIO A				
1	Supply: total cumulative o/w banks	0 0	900 800	2 000 1 890	3 000 2 890
2	Domestic demand estimate (cumulative)	242	494	675	857
3	Suppy – demand (cumulative stock): potential foreign demand	0	406	1 325	2 143
4	Implied increase (-decrease) in gross foreign debt if banks use 100% of securitization receipts to repay foreign debt*		-494	-675	-857
	SCENARIO B				
1	Supply: total cumulative o/w banks	700 700	2 100 2 000	3 660 3 550	-
2	(minus) supply cross border**	(0)	(434)	(820)	-
3=1-2	Supply: domestic cumulative	700	1 666	2 840	-
4	Domestic demand estimate (cumulative)	242	494	675	857
5=3-4	Supply – demand (cumulative stock): potential foreign demand	458	1 202	2 165	-
6	Expected cost of funds savings in bps	23	23	23	23
7	Supply if marginal reserve is applied	300	350	610	-
8=7-5	Supply – demand (cumulative stock) with marginal reserve requirement applied	-58	-144	-65	-
9	Implied increase (-decrease) in gross foreign debt if banks use 50% of securitization receipts to repay foreign debt and if cross-border securitization takes place (worst case scenario)	108	581	1 210	

Summary Quantitative Impact Assessment

MICROECONOMIC PERSPECTIVE		Cummulative amount in EUR million (3 years perspective except for consumers)		Methodology of microeconomic calculation	Amount of savings in EUR million (PV over 3 years except for consumers)	
		Scenario B	Scenario A		Scenario B	Scenario A
Banks	Securitized loans	3 550.0	2 890	Lower cost of funding (net)	-35.5	7.5
	Lower capital requirement	355	289	Lower cost of capital	44.2	27.9
Consumers / banks' clients*	Borrowing at better terms (bps decrease as of end period)		-23	Consumer surplus*	170.2	170.2
	Increase in banks' lending to the private sector		600-700 p.a.			
Leasing	Additional finance at lower cost	110.0	110.0	Multiple of addtional supply and cheaper funds	0.2	0.2
Domestic investors	Positive shift of risk/return frontier given total allocation to MBS and ABS securities	675.0	857.0	Additional yield/lower risk over alternative investment	17.9	24.6
TOTAL MICROECONOMIC BENEFITS					**197.0**	**230.4**
o/w short term					26.8	60.2
o/w long term					170.2	170.2
Total as % of 2006 GDP					0.6%	0.7%
MACROECONOMIC PERSPECTIVE						
Decrease in banks' foreign borrowing		1 775.0	2 890	Repayment of old foreign debt due to cost of regulation		
Non-resident investors' purchases of bonds in 3 ys		2 985.0	2 143			
Impact on growth of gross foreign debt in 3 ys		**1 210.0**	**-747.0**	**Cumm. growth**	**4.3%**	**-2.7%**
Impact on growth of net foreign debt in 3 ys		**605.0**	**-374.0**	**Cumm. grrowth**	**3.7%**	**-2.3%**

In Addition …

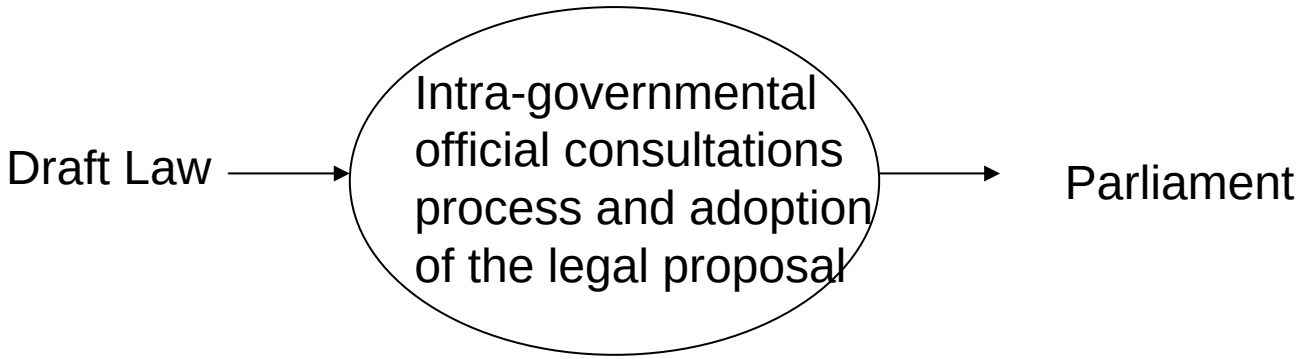
… RIA shows second – round impacts on use of released reserves and impact on net international debt, also showing that banks' incentives is to use maximum receipts from securitization for repayment of foreign debt …

… RIA also shows how coordinated implementation of Securitization Law, Securitization Framework of Basle II and high Marginal Reserve which is not applied to securitization receipts may lead to firm control and even decline of foreign debt …

… but …

… THE POINT IS TO SHARE RIA'S MODELS AND RESULTS SO THAT RIA BECOMES A BALANCED REFLECTION OF VIEWS AND BELIEFS OF ALL THE PARTIES INVOLVED.

How to Conclude the Process



The final steps (adoption process) has to be accompanied by RIA summary document

Assessment (pitfals and benefits) of the process

+

- Spreading knowledge about the topic
- Building consensus about key issues
- Getting access to “best practice”
- Thinking about details (“horizontal coordination of regulation”, enforcement and monitoring)

-

- Cost in terms of resources
- Cost in terms of time needed
- Overly cumbersome for top policy makers to appreciate the benefits and quality
- Very hard to manage due to complex governance structure and a large number of players involved

Velimir Šonje
Arhivanalitika

To: Securitization Project Steering Committee

Legal Drafting Team

October 11 2007

Consultations' Summary
Draft no 2

This document contains comparisons between the draft securitization law and recommendations provided by the Independent Legal Advisor (ILA), European Securitization Forum (ESF) and KfW during the consultation process. Recommendations marked by "ILA" were contained in the document "Final Guidelines for Drafting the Law" adopted by the Project Steering Committee in December 2006.

Comments/comparisons are written in italic. ***Sentences marked in bold italic represent suggestions to the Legal Drafting Team (LDT) to review proposed solutions in the present version of the draft law in light of KfW's comments received in September 2007.***

KfW's September document referred to herein is contained in the Annex to this document.

1. Structure and scope of the law

ILA: The law should be detailed to the extent required to maintain conceptual consistency and to implement the necessary rules (the "Golden Middle Approach"). Specifically, the law should deal with certain very important issues such as SPV structures, scope of supervision / licensing, servicing, taxes, data protection, bankruptcy remoteness, assignment of future receivables etc.

ESF: Follow the principles' approach to prevent the framework from becoming inflexible to market innovation

Prime motive for regulation has been to avoid regulatory failure (regulatory risk and ambiguity arising from other regulation). Following draft RIA and Final Guidelines, the legal drafting team (LDT) followed the "golden middle approach" and covered specific areas as recommended by ILA with the exception of taxes for the reasons explained further in the text.

ESF: Use Luxembourg law as a role model.

LDT consulted Luxembourg law extensively, except in matters where differences in respective legal concepts or doctrines prevented that. For example, the non existence of legal concept of trust in Croatia prevented a reference to and application of the trust and fiduciary contract in the law, whereas the law adopted various positions of Luxembourg law that were suitable for introduction either independently or complementary with typical Croatian legal concepts. In this regard the dualism of securitization undertakings (securitization company and securitization fund) found in Luxembourg law was accepted completely, the concept and role of the fiduciary representative was introduced in addition to the Investors' Assembly which reflects a traditional Croatian law approach, various methods of separation of securitized assets were either applied in the same way as in the Luxembourg law or in conjunction with methods prevailing under other laws of Croatia, etc. It should be noted that Croatian draft law has 60 articles vs. 90 articles in the Luxembourg law. The total number of words is larger by approximately 1/3.

2. Secondary regulation

ILA: The law should limit the need to amend various other laws as well as the scope of secondary regulation.

ESF: Regulate accounting and prudential rules if IAS-IFRS and Basle II have not been implemented in Croatia. Secondary regulation may be needed with respect to some technical areas or, in some cases, may not be needed at all.

There was no need to regulate accounting rules since IAS-IFRS are implemented in Croatia. As Basle II regulation (including secondary for banks) is under development and will be in place in 2008 or early 2009 at latest, there was no need for special regulation in this respect. In general, LDT tried to avoid need for secondary regulation since its quality and timing of implementation is uncertain. In addition, the LDT was of the view that the law should be designed so as to offer a reasonably complete and readily operational legal framework for securitization that market could apply instantly and start with securitization transactions solely on the basis of the law. At the same time, the law enables flexibility and leaves power to regulator to subsequently introduce the secondary regulations with regard to matters it finds necessary.

3. Supervision / licensing of SPVs

ILA: SPVs should not be subject to capital adequacy and minimal capital requirements. In order to protect investors and other participants against risks/losses arising from additional activities corporate objects and powers of SPVs should also be limited to the activities necessary to effect the securitization transaction. Any type of SPV should have an addition to its name in the form of an abbreviation that identifies it as a securitization vehicle. SPVs and SPV management companies should not be subject to extensive regulators' supervision comparable to supervision of open investment funds / management companies. Approval of management rules, reporting, ordering audits and

limited representation may represent acceptable forms of supervision. In general, licensing and supervision should not impose unreasonable burdens and excessive limitations.

ESF: SPV should not be subject to licensing requirements – they should be supervised as capital market transactions hence requiring supervision in the event of constituting public offers of securities, without prejudice of potential supervision of management companies and of the management of company SPV (approval of constitutional documents, management rules and persons that will manage SPVs). ILA followed ESF's advice in this respect.

To the extent not required by other Croatian legislation, there is no separate licensing (that is, prior authorization) of SPV. In cases where licensing is required due to other legislation the law envisages such licensing with the least formalities and with the view to protect market participants. In this regard it should be noted that SPV fund is "approved" only within the procedure of approval of the prospectus. There are no special approval / licensing procedures: SPV fund is automatically registered with financial regulator (entered into the register with regulator) by the mere fact that the prospectus is approved. Prior registration is though required under the law for SPV companies where they must submit evidence to the regulator in relation to their constitutional documents as well as persons who will manage the SPV (or the fund management company in case SPV is a securitization fund). Necessary identification / abbreviation is also included in the draft law. See further discussion on the legal form of SPV in section (13) below.

4. Definition of securitization transaction

ILA: Definition of securitization should provide for a clear distinction between the securitization transaction, on one hand, and factoring and/or asset sale, on the other hand. The definition should be such as to permit various securitization structures without excessive detailed regulation at the law level in order not to discourage market innovations.

ESF: Detailed definition should be avoided but defining securitization by reference to the transfer of assets or risk to Croatian SPV only should be avoided, too. A single definition involving the transfer of pool of assets and/or risk to an SPV which, in turn, finances the transfer through the issue of securities is recommended.

The essence of definitions follows the line of logic as depicted above: pools of assets and/or risk – SPV – issue of securities. However, definitions of cash and synthetic securitization had to be separated in order to eliminate potential confusion in an immature market as well as in order to minimize departures between the Law on Securitization and the Law on Credit Institutions which was designed in parallel based on the principles set out in the Directive 2006/48/EC. The Directive uses separate definitions of cash and synthetic securitization.

KFW's September comments point out that the last part of definition (art 4a) may be unnecessary (…out of which no obligations arise for the originator). This part of the definition was added in order to be in line with the Directive 2006/48/EC. However, LDT may wish to consider omitting this part of the definition. LDT should also discuss if the difference between "based on" and "backed by" is only of a linguistic importance or it has some legal merit (as suggested in the KfW's comment).

KFW's September comments suggest amending definition of credit risk (art 3c) by "…due to credit standing of the debtor".

As to KFW's comment on (art 4b) it is not clear that the law prevents intermediate structures. In other words, the definition is not explicit in requiring that the transfer should be between originator and issuing SPV. Intermediary structures are allowed. See also section 18 below.

5. **ABS programmes, master trusts, subparticipations, replenishments of assets, active pool management**

ILA: ABCP programmes, master trust schemes etc. thus allowing structures with replenishment of assets and active pool management including multi-issuance structures should be allowed without excessively detailed regulation.

ESF: Such structures should be permitted but without extensive regulation in the law.

The principle envisaged by the law is that any structure which is envisaged and described in the approved prospectus is allowed unless prohibited by some other mandatory law. Nothing would prevent any kind of active pool management (if contained in the prospectus). Subparticipations are regulated in the Law on Credit Institutions (drafting stage completed) along the lines of the Directive 2006/48/EC. Bond programs are prevented by the Securities Market Law and the LDT finally agreed that bond or commercial paper programs for securitization purposes only should not be introduced by this law as they will be allowed by the amendments to the Securities Market Law which has to be brought in line with the acquis. Further comments related to multi-issuance SPVs are depicted below (15).

6. **Covered bonds**

ESF & ILA: No covered bonds or different types of products should be regulated by this law.

LDT followed this advice.

7. **Assets and originators suitable for securitization**

ESF & ILA: Securitization law should not restrict types of assets or originators eligible for securitization except individuals who are not appropriate originators.

There are no restrictions as to the types of assets and/or the nature of the originator in the securitization law except individuals who are not recognized as eligible originators, which is in line with recommendations. Some types of individuals' claims are not eligible due to constraints arising from other special laws (e.g. individuals' 2nd pillar pension accounts), which is in line with recommendations. Tax claims are not eligible for securitization due to fundamental fiscal laws. In conclusion, restrictions to assignment of certain types of assets provided by other laws are considered minor so there was no need to allow for their transfer under this law.

In September comments KfW noticed that the definition of securitized assets uses the concept of "similar assets" and/or "assets with common characteristic". LDT should consider leaving out terms such as "similar" or "homogenous" as this is not a market requirement. This paragraph should only relate to "receivables and other assets". This paragraph makes reference, for the purpose of setting examples, to several types of securitiesed assets and does not eliminate or narrow any of them. It sets out the following groups of securitiesed assets: (i) receivables generally, (ii) receivables related by some common features, (iii) any other assets , (iv) other assets related by common features, (v) future receivebles, (vi) other future assets.

KfW's September comments point out that the current wording of the third paragraph of art. 6 may exclude synthetic securitization as it often happens related to assets that cannot be transferred, but the associated credit risk can. LDT may wish to discuss once again if there is a real danger that this wording would rule out synthetic securitization. For the time being it seems that there is no room for such interpretation.

8. **Statutory pledge as a main instrument for achieving separation and bankruptcy remoteness**

ESF & ILA: Agree with a statutory pledge approach for securitization companies

LDT followed this recommendation.

9. **Separate legal personalities of the Fund and the management company as an instrument of separation and bankruptcy remoteness**

ESF & ILA: Fund should be estate without legal personality separated from originator managed by a special company which does not own the fund.

LDT followed this recommendation.

10. **Eligibility of future claims / flows for securitizations and their legal treatment (coming into existence)**

ESF & ILA: Some laws (e.g. Luxembourg, Spain) contain specific provisions for securitization of future flows. In particular, Luxembourg law regulates the time the

assignment of future flows comes into existence in order to minimize regulatory ambiguity in case of originator's bankruptcy.

LDT followed the principle to regulate future flows and their coming into existence following the principles of the Luxembourg law to the maximum extent possible in the Croatian legal environment.

11. Status of the assignment of future un-contracted receivables following insolvency of the originator

ILA: Relevant assets must be identified or be capable of being identified at the time the relevant assets come into existence. In this respect particular attention should be paid to future receivables. Special attention should be paid to the status of the assignment of the future receivables from the perspective of the potential bankruptcy of the originator.

ESF: Luxembourg law provides that the assignment of future claims will be effective upon coming into existence notwithstanding the opening of the bankruptcy proceedings against the assignor before the date on which the claim comes into existence.

Draft law in essence follows the Luxembourg law in this respect and even strengthens the integrity of future claims by providing:

- *(i) when future receivables come into existence, in relation to all the parties concerned and also in relation to any third party, the effects of the transfer shall be considered created at the moment of entry into the transfer agreement (Art 25);*
- *(ii) the bankruptcy administrator of an originator is not entitled to exercise the "cherry picking" rights and effectively undermine the transaction (Art. 32);.*
- *(iii) if the SPV has made a counterperformance in favour of the originator under the transfer agreement or is willing to make it within 3 months upon the invitation of the bankruptcy court, the transfer of assets onto the SPV may not be challenged by the bankruptcy authorities or other creditors of the originator (except for some very limited reasons) (Art. 32);*

KfW's September comments point to potential problem with interpretation of art 32 as, in KfW's opinion, the article does only refer to the receivables purchase agreement but not to the underlying asset. LDT may wish to discuss and check if this legal interpretation is relevant. We are not certain that we understand this comment correctly. The Art. 32 is specific in that it relates to the "… transfer of the assets or credit risk for the purpose of securitisation…" and does not even mention the receivables purchase agreements to which this comment refers.

12. Securitization Register

ILA: A concept of securitization register should be considered more closely. Such a register may help (i) achieving isolation/segregation of the assigned assets, (ii) publication of the assignment. Achieving the registration of ancillary rights attached to assets without complying with any additional formalities and registrations (e.g. land registry) should be further analyzed.

ESF: An efficient framework must facilitate true sale by permitting the isolation of assets including ancillary rights without imposing costly or time-consuming formalities and ensuring the enforceability of realization. Also, authorities should review options to develop the Register (of the type like German Refinanzierungsregister) having in mind (i) consumer protection issues, (ii) need for legal certainity and security for the overall legal system and (iii) peculiarities for some types of assets.

It has been agreed by the LDT that isolation, transfer and consumer protection can be legally guaranteed by other provisions in the law. Introduction of the fully functional asset register would involve costly and time consuming procedures with unclear benefits on top of benefits provided by existing provisions. Hence the Securitization Register, as introduced by the draft law, is not the Refinanzierungsregister type of register but rather a special register organized and governed by the regulator not for the purpose of registration of eligible assets but rather for the purpose of registration of participants to the transaction (in most cases only subject to approval of the prospectus). This register should facilitate and simplify otherwise complicated court registration procedures and should ensure that securitization is conducted by professional and qualified players. In most cases it does not imply additional licensing procedures since the entry into the register is largely subject to prospectus approval (see also (3) above and consider this as a comment relevant to ***KfW's September comment related to art. 47****).*

As far as registration of ancillary rights attached to assets is concerned, LDT is of an opinion that the solution proposed by the law will be functional. Transfer of ancillary rights happens simultaneously with the assignment though execution of some of these rights (e.g. mortgage foreclosure) will be limited until the official registration of mortgage by the court. Nevertheless, registration with the land registry may happen ex post, upon default of the final obligor. Given the limited number of defaults such registration shall consume limited amounts of time and cost reasonable amounts of money related to cases where SPV/servicer decide to initiate foreclosure procedure.

13. Forms of SPV: company vs fund vehicle

ILA: Securitization Law should provide for (i) a company, and (ii) a fund structure. In case of fund this should be a specific securitization fund regulated under securitization law with only a few general provisions of the Investment Funds Law that should apply. Furthermore, the law should not limit the use of other vehicles (e.g. trusts) that may become available in the future (ratification of Hague convention on trusts may be considered in this respect).

ESF: We recommend that both structures are regulated in the future Croatian securitization law, as that will provide a broader menu of options for market participants.

LDT followed this recommendation except that ratification of Hague convention / introduction of trusts into the body of Croatian law was considred to be far beyond the scope and aims of this project.

14. Activities / contractual relationships necessary for the SPV to effect the transaction

ILA: The law should make clear that the sole purpose of the SPV is to acquire pools of assets or risks from such assets and to channel the payments from the underlying assets to investors.

ESF: The Law should not contain a list of contractual relationships that a securitization SPV may enter into. Instead, fund SPV cannot perform any other activity than simply grouping the pool of securitized assets and passing the cash flows onto investors. Company's SPV corporate object should be limited to the performance of securitization transactions.

LDT followed this recommendation (there is no exclusive list of contractual relationships that a securitization SPV may enter into) and SPVs is by explicit provision of Art. 10.2 entitled to perform only securitization related activities.

However, in September comments KfW interpreted definitions (in particular, art 3a) as potentially restrictive regarding contracts SPV may enter into (as if the law specifies that SPV may issue securities and contract derivatives only). V. Šonje's opinion is that the securities and derivatives are mentioned for the purposes of defining the "securitisation" as the defined term, while business of the SPVs is defined in Section II of the law implying no restrictions regarding contracting of other instruments (under limitation that the contract is done for the purpose of securitization only and that the respective activity be set out in the prospectus). Further group of arrangements/instruments that SPV is entitled to enter into relate to the management with the cash flow surpluses. LDT may whish to discuss this issue to reassess Mr Šonje's opinion.

15. Re-sell, replenishment, portfolio management, clean-up calls (see also 5 above) and multi-issuance structures

ILA: Re-sell should be allowed under flexible conditions. Re-sell proceeds should certainly not be managed in an investment fund manner that is they should be used for purchases of new securitized assets and/or payments to investors. Definitions of SPV's activities limits are important in this respect. Multi-transaction types of SPVs that use organization of securitized assets within separate asset compartments are one of two options for achieving multi-issuance structures. The other option is to have fund

management company which would be able to register and manage more than one securitization fund.

ESF: Any type of termination of relevant transaction will lead to liquidation if SPV is a single-transaction type. If SPV is a multi-transaction type, organizing assets in several compartments, liquidation of one compartment will not affect the others which may be seen as an advantage.

LDT was fully aware of the advantages of compartmentalization. In finding the final solution LDT weighed these advantages vs costs/risks and alternative ways to achieve the same goal. The final assessment was that compartmentalization of a company SPV is not well established legal and financial concept in Croatia. Its forced implementation by the Securitization Law may lead to large risks regarding legal, accounting and tax treatment. Such risks cannot be foreseen at this stage and hence cannot be regulated ex ante. Court treatment of such a legal concept is also highly uncertain. At the same time, a possibility to run only one securitization fund management company which manages several securitization funds (effectively meaning it can manage unlimited number of transactions at the same time), coupled with a possibility to simply register additional fund by a mere approval of a new prospectus, effectively mimics the concept of multi-issuance. Perhaps it is not as effective solution as compartmentalization in Luxembourg but this solution effectively mimics the multi-issuance solution within specific Croatian legal and financial environment without significant additional cost for market participants.

Termination of relevant transaction will indeed lead to liquidation of an SPV if such SPV is a company as that form is envisaged by the draft law as a single-transaction securitization entity.

This comment is also related to KfW's September comments in relation to art. 10.

16. Hedging arrangements

ILA: Ability of the SPV to enter into hedging arrangements should not be denied, however the LDT should include the general provision dealing with the main purposes for which the entry into such hedging arrangements would be allowed.

ESF: Avoid making a detailed regulation of hedging arrangements that the SPV would be allowed to enter into

There are no detailed constraints of this kind. SPVs are allowed to enter such arrangements and the only additional provisions related to this are contained in art. 54 of the draft law. It requires SPV to attach Investment Policy document to the prospectus. This document should depict the broad principles of managing eventual excess cash flow including ways of entering into hedging arrangements. LDT believes that this provision is in line with usual market transparency standards for the purpose of delivering as much information as possible to investors.

17. Conflict of laws in multi-jurisdictional securitization transactions

ILA: The law should envisage the possibility of the originator to transfer the assets to a non-Croatian SPV that would remain governed by the law of the place of its incorporation. The extent of application of the law should also be clear in transactions where foreign law would govern the assignment and/or the securities would be issued abroad.

ESF: As multi-jurisdictional securitization transactions usually face significant legal barriers it should be clear which special provisions (e.g. bankruptcy remoteness) benefit off shore SPV. It could be helpful that the future Croatian Securitization law expressly recognize the transfer of Croatian assets to an off shore SPV. With regard to the issue of securities it should be subject to the law of the place where the securities are being offered to the public regardless of the place of incorporation of the SPV.

There is nothing in the draft law that would support an interpretation that the assets cannot be transferred to an off shore SPV. Following ESF's advice, the law (art. 2(2)) expressly acknowledges that the law applies in case of the transfer of Croatian assets to off shore SPV (both if securitization transaction is performed in or outside Croatia). Furthermore, Art. 59.2 of the draft law adopted the recommendation that the issue of securities will be subject to the law of the place where securities are being offered and specifically provides that a securitization undertaking having a seat in Croatia is authorized to conduct securitization and issue securities abroad pursuant to the laws or respective foreign state.

However, KfW's September comments point to potential problems with interpretations of this provision. These interpretations may stimulate LDT to think if some more precise regulation may be required in this respect, or lawyers would be able to issue unambiguous opinions at the basis of the existing version of regulation:

- ***(i) KfW's opinion is that foreign arrangers and service providers should be specially regulated as they would be reluctant to become regulated entities in Croatia (art 5 and 7) especially in cases when securities are issued abroad. LDT's interpretation of the wording of the draft law is that an obligation for foreign arrangers and service providers to become regulated entities in Croatia does not exist.***
- ***(ii) KfW's opinion in relation to art 59 is that it should be made clearer to what extent the provisions of the Act apply to securitizations where investors are not in Croatia. Article 59 does not affect foreign investors. Moreover it explicitely provides that foreign issues will be pursuant to foreign law which would then govern the position of investors.***

18. Intermediary SPV

ESF & ILA: Intermediary SPVs may be desired by market participants as such structures are normally used to isolate risks and maximize the performance of SPV

Intermediary SPV are recognized by the draft law in Art. 9.1 as securitization undertakings that unlike those that acquire or dispose of securitised assets and issue securities or contract derivatives, merelely "… perform only some of these transactions…". Intermediary SPVs may be introduced under the draft law under conditions that (i) it is disclosed to investors in the prospectus, (ii) transfer of assets from intermediary to issuing SPV happens within 6 months after approval of the prospectus. Transfer can also happen after 6 months but subject to approval of changed prospectus. 6 month term has been accepted by market participants during the consultation process.

19. Tranches / securities

ILA: The securitization law should not limit the types of debt securities that may be issued in securitization transactions. Issues in tranches should be allowed and covered by one prospectus. Special attention should be attached to the problem whether securitization fund issues units or debt securities.

ESF: Single prospectus should cover all tranches of a single issue.

LDT followed ESF's and ILA's recommendation to expressly regulate single prospectus principles because according to current interpretation of Croatian Securities Market Law each tranche would require separate prospectus. Art. 43 of the draft law is largely devoted to statutory implementation of this objective. Limitations to securities' issues programs are discussed under (5).

There are no limits to the types of debt securities that may be issued. LDT's opinion is that funds may issue debt securities.

20. Prospectus and disclosure

ILA: The law should adequately deal with specific information characteristics of securitization (e.g. disclosure of conflicts of interest). That may be partly dealt with stock exchange rules. However, securities should be subject to high but reasonable disclosure standards in line with internationally accepted ones (e.g. EU Prospectus Directive). As an exception, the issuance of the prospectus should be obligatory both in case of public and private placements.

ESF: Although in practice a private prospectus (offering document) will normally be used we recommend that private placements not be subject to the obligation of publishing a prospectus.

*This is the only provision where LDT seem to have expressly departed from ESF's recommendation (**see also KfW's comment on this topic under art. 40**). However, the departure is more of the formal than substantive nature. LDT's opinion was that there is a lot to gain by introducing this requirement into otherwise non-transparent market (which may help market development even among qualified investors). Also this provision*

may help courts in case of legal suits to avoid objections that any party was not informed and/or that assets were not properly identified and/or evaluated. Finally, this provision would help to use other features of the law that are linked to approval of prospectus (e.g. automatic registration of SPV etc). Hence the benefits of the provision may prove to be much larger compared to the costs that are zero or marginally low because the issuing entity would have to compile the offering circular / documentation anyway in order to present the transaction to qualified investors.

Evaluation of securitized assets is a closely related issue ***(see also KfW's comments on art. 23,26 and 35)****. For the same reasons as indicated above an obligation to obtain independent evaluation of assets (and re-evaluation in case of change in prospectus) was introduced. Given the fact that evaluation may imply significant cost and that this provision is not found in other jurisdictions (evaluation is normally performed by parties to transaction),* ***LDT is invited to perform additional cost / benefit assessment of evaluation provisions throughout the law and eliminate the provision unless really serious costs / risks would arise in a transaction without independent evaluation of securitized assets.***

Provisions on disclosure of the conflict of interest were included in the articles dealing with the prospectus.

21. Rating

ILA: Market participants should be able to freely decide whether or not the issue should be rated depending on the target investors.

ESF: Rating of any securities should not be obligatory by the securitization law.

LDT followed this recommendation.

22. Eligible servicers

ILA: Securitization law should provide a definition of the scope of servicing activities. Authorized servicers should be licenced financial institutions and originators but the law should provide for the possibility that some of the activities are rendered by different service providers including the provision that rendering any such activity does not constitute legal advice. The law should delegate secondary regulation to add further categories of eligible servicers when appropriate. Relevant disclosure documents should provide for sufficient details about the servicer and contractual arrangments between SPV and the servicer.

ESF: Although some jurisdictions employ restrictions to the third party servicers (e.g. Italy and France), third party servicing promotes competition, efficiency and quality of service. Supervision of servicers comparable to that of management companies would be seen by market participants as acceptable.

LDT followed the recommendation to allow third party servicers but it introduced some specific limitations (no financial loss, minimum capital of 140,000 ths EUR and track-record) that are not applied to originators and banks acting as servicers. LDT wanted to exclude suspicious servicers and sees the additional requirements as minimal and not representing significant departure from the best practice. ***KfW's comment in relation to art 17 (actually 18) is that the license requirement for the third party servicers creates an additional burden as compared to other countries.*** *It should be notified again that a special license has not been introduced for the third party servicers. The procedure for approval is the same – everything is approved by mere approval of the prospectus. It is just that the application for the prospectus would have to contain documents proving that the third party servicer meets three aforementioned legal requirements. LDT shall review art. 50 and 51 in order to eliminate any ambiguity regarding this interpretation. In this respect it should be notified that the LDT departed from ILA's advice to delegate licensing of third party servicers to secondary regulation. Otherwise the draft law follows ILA's advice.*

23. Capacity in which the servicer enforces assigned receivables

ILA: Securitization law should mitigate the risk of not being able to differentiate between the servicer's funds and securitization assets or financial flows related to it. Collected proceeds should be deposited to a separate bank account which should not make part of servicer's assets and/or cannot be subject to enforcement by the third party

ESF: As an agent of the SPV servicer is empowered by the law or contract.

*LDT followed these recommendations and in essence the draft law set forth a statutory framework for performance of servicer's role and at the same time expressly enabled SPVs and servicers to regulate any details of their relationship by a contract. LDT decided to provide more detailed regulation of servicer's capacity in the body of the draft law in order to rule out any risk that the bankruptcy, fraud, or any other kind of business casualty interferes with the function of the servicer for the benefit of SPV and, ultimately, investors. As the role of servicer has been deemed to be of a critical importance, the LDT understood that more detailed regulation would not be contrary to recommendations. For that reason, art. 19 regulates separation of assets with the servicer including separate records (****which implies that the originator-servicer may use the same accounts for payments as used before which will economize notification costs – this is an answer to KfW's September comment related to art 19),*** *servicer's reporting obligations, collection of servicer's fees, exclusion of servicer's statutory pledge over securitized assets for its fees and costs (on the basis of the Code of Obligations) etc.*

24. Bondholders' meeting and fiduciary representative (security trustee)

ILA: Bondholders' meeting and joint – fiduciary – representative should be envisaged to prescribe a minimum scope of authority leaving other issues to be defined by the terms and conditions of the ABS.

ESF: The existence of bondholders' representatives should follow the practice of other fixed income markets in Europe having in mind that in Portuguese, Spanish and French regulation where the SPV takes the form of a fund, the management company usually takes the role of investors' representative. Given its civil law tradition it is not necessary to regulate a security trustee concept as envisaged in the common law. Foreign EU firms qualified to represent investors according to their local laws should be permited to perform the same role in Croatia according to its future law.

Common law type of security trustee has not been introduced by this law as recommended by the ESF, however its role of an easy to mobilize operational guardian of investors' rights and interests was reflected in the draft law by introduction of the fiduciary representative . LDT was of an opinion that the fund management company would have a serious conflict of interest, so investor's representation should be regulated through separate entities – investors' assembly and the fiduciary representative. Fiduciary representative has to be appointed from the very beginning of the transaction and this role can be performed by licensed auditors and lawyers. Third parties can perform this function, too, subject to secondary regulation issued by financial regulator which may therefore open door to representation entities and persons who perform these functions in the EU countries. Investors' Assembly may be convened only with regard to protection of investors' the most fundamental economical interest where the fiduciary representative would not be able to act.

In the September comments KfW asked how would investors convene. Art 21 is specific in this respect by requiring that 50% of holders of nominal securities issued convene. LDT did not think it to be necessary to regulate technique of convening investors. There was no intention to treat different tranches differently but that may be an interesting problem to think through and perhaps additionally regulate. LDT should focus on this problem once again.

25. Tax treatment

ESF & ILA: Specific set of tax rules would be preferable for the future law to provide certainty and security to market participants. The alternative of getting tax clearances from the authorities on a case-by-case basis is not appropriate for Croatia given its condition of new entrant to the international securitization markets. As a general rule, securitization is not intended to create tax benefits for any party to the transaction.

Tax Administration opposed any idea to have tax provisions in the securitization law because all tax provisions should be made in tax laws. This in itself does not mean that the alternative is that getting tax clearances on a case-by-case basis would be necessary. That of course depends on the readiness of the Tax Administration to interpret and apply the tax rules to securitization transactions in a manner consistent with their interpretation and application to other transactions having common elements with securitization transactions.

26. Bankruptcy remoteness of the SPV

ILA: SPV fund should not be made subject to bankruptcy law. Bankruptcy of a company SPV is a remote possibility but the law should aim at achieving bankruptcy remoteness even more by the statutory lien, limits to activities, explicit statutory recognition of limited recourse / no petition clauses and other mechanisms such as prescribing conditions for a true sale securitization, encouraging arm's length assignment by clarification of application of bankruptcy law (e.g. preventing bankruptcy administrator from interfering with cash flows from securitized assets)

ESF: Where the SPV is a standard company it will be subject to general bankruptcy laws. It is recommended to follow the Luxembourg law which expressly recognizes the validity and enforceability of limited recourse and non-petition clauses in the bankruptcy of securitization undertaking. Special attention should be paid if Croatian case law recognizes the concepts of bankruptcy group consolidation and piercing of corporate veil. Where the SPV is a fund special regulation would apply. In particular, servicer's separate accounts provisions may be the only way to achieve effective separation in practice, so it should be investigated if the same principle can be extended to originator irrespective if originator acts as servicer or not.

Besides statutory pledge, which effectively secures the securitized assets from the company SPV for the benefit of investors in case of bankruptcy of SPV, bankruptcy remoteness is strengthened by additional provisions in articles 33, 34 and 35. They regulate separation of securitized assets from SPVs assets, settlement from securitization transactions and restrictions on costs that can be collected from securitization assets. In short, SPVs must keep the securitized assets separated from their own assets (applies particularly to SPVs companies) and any collection from securitizaton assets from the party not related to securitization is prevented by the law. Parties related to the transaction can collect costs from the securitization assets if and only if such potential collections are disclosed in the prospectus and attached contractual documentation. Therefore any residual risk remaining with the SPV would have to be disclosed. Lifting of corporate veil is regulated by the Company Law, however very occasional and inconsistent court practice does not suggest what the most effective strategy with regard to such phenomena would be in case of securitization and whether the potential lifting would work for the benefit of investors or to the detriment or arrangers and sponsors. LDT followed ILA's advice in many respects with the only notable exception related to inability to prescribe conditions for true sale securitization as this may interfere with normal market and regulatory practices involving treatment of true sales by rating agencies, audit companies and special regulations (e.g. Capital Requirements Directive / Basle II in relation to banks).

This partly provides an answer to KfW's comments under art. 16. Nevertheless, LDT may wish to review bankruptcy / liquidation provisions to make sure that the proposed provisions are in line with ESF's recommendations, especially regarding group

consolidation, lifting of the corporate veil and extension of accounts' separation to the originator as well regardless if it acts as servicer or not.

27. Data and consumers' protection rules

ILA: The rights of the final debtors of the sold receivables must be preserved and their legal positions/rights must not change after securitization is implemented. The law should allow the option of joint notification of debtors by means of public announcement. Explicit provision on legal consequences of such notification should be incorporated in the law.

ESF: The simplest and the least costly option is to allow under the securitization law the transfer of necessary personal data to third party servicers which would be bound by the same data protection obligations applicable to originators.

LDT followed this recommendation. ***Although the third para of art. 53 makes a specific provision that data transfer among parties to the transaction is free, KfW proposes that it should be made clear that the originator can submit confidential data. LDT may wish to discuss KfW's proposal in which case KfW recommends to add regulation on conditions under which such transfer would be allowed.***

28. Other suggestions to the LDT arising from KfW's September comments:

28.1. What does "professional association" mean (related to art. 15b.). LDT may wish to find more precise formulation or omit ambiguous term.
28.2. What is the role of a Sponsor? Motive for entering the sponsor came from Directive 2006/48/EC. Sponsor is regulated in exactly the same way as in the directive. LDT may wish to reconsider costs and benefits of having this participant regulated in the law. Additional consultations with the drafting team for the Law on Credit Institutions would be required in this respect.
28.3. Why para 2 of art 27 requires transfers of data files to the SPV if that would not be necessary if the originator is also performing the role of the servicer and how would this be done in the case of future claims? LDT may wish to rething the provision along these lines.
28.4. KfW asks for additional opinion if the transfer of ancillary rights subject to later entry to the land registry would be valid if the originator becomes insolvent before the entry in the land registry.
28.5. Art. 30 on joint securitization leavs the impression that everything should happen at the same time and that all originators need to enter into a joint securitization document with the SPV which is not deemed necessary because it can impose limitations towards structural flexibility of the transactions.
28.6. The third paragraph of the art. 32 could not be understood by KfW so LDT may wish to review if that was due to bad translation or there may be some more fundamental problem with this provision.
28.7. Art 37 could not be understood. This is a special provision which eliminates the ambiguity which may arise in case a creditor-originator assigns a pool of

loans with variable interest rate to an SPV whereas the interest rate is not linked to a benchmark rate but rather can be changed at discretion of the originator's board. This provision simply says that such interest rate would change in line with originator's decisions to change the rates on the similar type of loans remaining on its books.

28.8. KfW raised an issue if non-registered real estate can be fully separated in the sense of art. 33?

28.9. KfW raised the issue what does the debt security mean and does it cover the first loss tranches (in the context of art 39)? Debt security is a well defined concept according to Securities Market Law and since no other security can serve the purpose of the first loss piece the debt security would serve this purpose well.

28.10. KfW recognized some potential ambiguity in the formulation "…at the basis of the value of securitized assets" LDT may wish to think about implications of simplifying the expression by omitting "… the value of …" since KfW is worried how to achieve overcollateralization in case this expression remains.

28.11. In relation to provision about prospectus (41b) inclusion of originator data may be very unusual so the LDT may wish to pursue cost-benefit exercise in other to better understand what cost may be implied by omitting this provision.

28.12. In relation to 41(E)2 on the disclosure of all data that may lead to potential conflict of interest KfW is sure that international investment banks will not be able to submit such data because they do not have these data available. LDT may wish to reformulate this provision in order to make it more realistic.

28.13. KfW still did not find explicit allowance of limited recourse provisions where recourse of investors and other counterparties of the SPV can be limited to the available assets in art. 43. LDT may wish to amend the article expressly allowing for limited recourse provisions.

28.14. A period of 60 days for regulator approval is too long by international standards. LDT may wish to discuss a shorter period for approval.

28.15. LDT may wish to specify what are the important characteristics of derivatives to be reported in the offering circular (art 46)

28.16. Art 55: forwarding financial statements to individual investors may be unnecessary and costly exercise so the LDT may wish to find a more practical solution.

Annex

Note

To Velimir Sonje

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Frankfurt, 17.09.2007

Securitisation Act Croatia (Final Draft 25.07.2007, English version)

Below please find the comments we consider most relevant. The comments are based on ample input from Dr. Kurt Dittrich (Linklaters), who gratefully continues to support the KfW Team from time to time (hence still also the Steering Committee). The comments are based on the draft version of the Act dated 25.07.2007 (English version) and circulated to the International Members of the Steering Committee by Velimir Sonje on 27.07.2007.

One general overall comment in advance: The Croatian authorities asked KfW to join the process based on the objective to use KfW's knowledge and experience to build a market friendly best practice based securitisation regulation in Croatia. Besides being proud of having the opportunity to participate in the process at all, from the beginning we had sympathy with the idea presented to us to contribute to the creation of a securitisation framework which would consist of a limited number of articles (some sort of easy to understand primary regulation) and to leave the details for secondary regulation. Now, we need to discuss a draft consisting of about sixty articles which are, in large parts, also very detailed. Obviously, detailed regulation seems to be good practise in Croatian legislation. We are fine with this development, and of course, we would have been less surprised, if we had been aware of such outcome from the beginning.

Anyway, regarding the overall objectives of our cooperation, it is our impression that the current version of the Act mirrors something like a very "protective" instrument which has been created, understandably, in the context of uncertainty. This uncertainty has to do with the fact that, unfortunately, the Croatian parties involved in the project so far never have had an opportunity to practically deal with securitisation issues in the context of concrete transactions. Of course, we recognise the difficulties to draft a law on such a complicated capital market instrument straight from the drawing-board. Given the fact that all of us feel responsible for the final outcome, at least at a technical level, we do not

feel very comfortable with the results achieved so far, especially as we would currently see the danger that the Act would contribute to hamper rather than to support the development of securitisation in Croatia. In this context we are interested to learn to which extent you may have obtained technical and legal feed back on the latest draft Act(for example, from the Croatian banking community)?

Most relevant comments on the Draft Law

Art 3 (a): In addition to securities and derivatives securitisation entities should also be able to enter into other funding instruments in order to keep flexibility. This applies then generally to a number of provisions.

Art 3 (c): At the end of the definition we propose to add "…due to the credit standing of the debtor" in order to make clear that dilution risks are excluded.

Art 4 (a): The instruments to be issued should be "backed by" rather than "based on" the underlying assets. We propose to delete the partial phrase "…based on which the originator has no payment obligation", since the aim of this phrase is unclear.

Art 4: (b) Transfers of assets or credit risk may not be only directly from the originator to the SPV; there may be intermediation structures (such as in synthetic securitisations the like KfW's PROVIDE and PROMISE structures). Such structures should also be covered (also in Article 9).

Art 5: In our view it may be critical to regulate all participants in a securitisation. In particular foreign service providers (which are nowhere regulated) will be very reluctant to become regulated entities in Croatia.

Art. 6: The first paragraph should only relate to "receivables and other assets". While it may be advantageous if a pool of securitised assets is homogeneous this is not an absolute market requirement.

Art 6: The current phrasing of the third paragraph would also exclude synthetic securitisation (which is often used if assets can not be transferred but the credit risk attached to such assets). Further, if Croatian Civil law provides that assets can not be transferred, then this should also apply to securitisations. It should however not be necessary to exclude securitisations generally on this basis.

Art. 7:In our view it may be critical to regulate all participants in a securitisation. In particular foreign arrangers and service providers (which are nowhere regulated) will be very reluctant to become regulated entities in Croatia. Would this also apply even if the securities are not placed in Croatia (only on the basis that we have a Croatian SPV)? In particular such service providers may not accept the far reaching competences (such as access to premises which may not even be in Croatia).

Art. 10: The last paragraph effectively excludes multi issuance structures. We still do not think that this is necessary. To the contrary the use of one SPV for various securitisations may substantially limit the costs (in particular in case of smaller transactions).

Art 15 (b): What does "professional association" mean?

Art 16: Funds must also be used for service providers and other participants. How are the directors and the auditors of the company paid?

Art. 17: The license requirement for third party servicers creates an additional burden as compared to other countries.

Art 19: Is it clear that the originator can continue to use the accounts it used for collection before the securitisation took place (and are the collections on these accounts also protected even if they are commingled with other funds of the originator)? Otherwise, notification of the securitisation is almost mandatory in order to change the accounts. This will be critical for consumer asset transactions.

Art 20: What exactly is the role of a Sponsor?

Art. 21: In practice: How will the investors convene? Notice via the clearing-system? Will different tranches be treated differently?

Art 23, 26: Why do the assets need to be evaluated? In particular, is this at all possible for future assets? We are not aware of any other country where such requirement exists. Evaluation might be very expensive given the liability exposure of the evaluator. The absolute market standard is to leave this to the investors who must make their own economical judgement.

Art: 27: If the originator is also performing the role of the servicer (which is generally the case): why is it necessary to deliver all files to the SPV? In particular, this appears to be critical from a data protection perspective. How would this be done in the case of securitisation of future receivables?

Art 28: If registration is not completed at the time of the securitisation: is the transfer of the assets nevertheless valid in case of the insolvency of the originator?

Art. 30: Is it necessary that all this happens at the same time? Why do all originators need to enter into a joint securitisation document with the SPV? The current phrasing of the Article imposes limitations towards structural flexibility!

Art. 32: The Article does only refer to the receivables purchase agreement but not to the underlying asset. This must also be fulfilled by the bankruptcy administrator. The last paragraph appears to be unclear.

Art 33: Can non-registered assets (in particular real estate) also be separated?

Art. 35: Requirement for regulator's consent may be time consuming. New evaluation again is very costly!

Art 37: The meaning of this Art. is unclear.

Art 39: What does "debt" security mean? Does this cover the first loss risk tranches? What does “on the basis of the value of securitised assets” imply (would it permit to securities whose total notional amount is less than the value of the assets? If not, how would you achieve over-collateralisation? In general, why do you feel such limitation to be necessary?

Art 40: We are still not convinced that a private investor needs a prospectus. In combination with Art. 59 this requirement would even apply to bilateral synthetic securitisations with foreign investors.

Art. 41 (B): Inclusion of originator data is very unusual.

Art 41 (E) 2.: It will be absolutely impossible to get this information e.g. from international investment banks (they will not have this information available).

Art. 43: The Art. does not seem to explicitly allow limited recourse provisions where recourse of investors and other counterparties of the SPV can be limited to the available assets.

Art. 44: A period of 60 days for regulator approval or rejection is way too long. The last paragraph appears to be very vague.

Art. 46: What are important characteristics?

Art 47 et seq: We are not clear with respect to the ultimate purpose of the register?

Art. 53: It should also be made clear that the originator can submit confidential data (and under which conditions).

Art. 55: How can accounts be submitted to all investors (which will regularly not be known)? The cost of this undertaking may be substantial.

Art. 59: The provision should make it clearer to what extent the provisions of the Act apply to foreign securitisations (i.e. securitisation where the investors are not in Croatia)?

KfW Team