Structured Finance & Securitisation

Contributing editor
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2016

GETTING THE DEAL THROUGH

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Structured Finance & Securitisation 2016

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Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

First published 2015
Second edition
ISSN 2058-5594

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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Switzerland

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General

1 What legislation governs securitisation in your jurisdiction? Has your jurisdiction enacted a specific securitisation law?

Securitisation has developed in Switzerland without specific supporting legislation, and there is no regulatory authority for securitisation transactions. Accordingly, the general legal framework is relevant as for any other financing transaction, such as the Swiss Code of Obligations (in particular in relation to matters relating to the formation of the special purpose vehicle (SPV) and the transfer of the receivables and the asset as such) as well as general capital markets regulations as relevant.

2 Does your jurisdiction define which types of transactions constitute securitisations?

This question is not relevant (see question 1).

3 How large is the market for securitisations in your jurisdiction?

Given that the market for securitisations in Switzerland is still developing, there is no reliable data available that would provide for a comprehensive overview.

However, the number and volume of public securitisation transactions placed and listed in Switzerland has massively increased in the auto lease and the credit card sectors in the last four years. In 2015, Cembra Money Bank (200 million Swiss franc Class A Notes), Swisscard (3y soft bullet, 190 million Swiss franc Class A, 6 million Swiss franc Class B and 4 million Swiss franc Class C; 5y soft bullet 190 million Swiss franc Class A, 6 million Swiss franc Class B and 4 million Swiss franc Class C) and AMAG Leasing (310.4 million Swiss franc Class A Notes) issued transactions and it appears that this trend will continue in 2016.

While it has been rather silent on the CMBS and the RMBS side, it can be expected that players will continue to consider securitisation transactions in the real estate sector, given that regulators around the world will increase the pressure on players from a regulatory capital perspective (in particular with a view to Basel IV).

In addition, there is a larger number of privately placed deals in various asset categories, such as trade receivables, auto leases and loans, commodities receivables and similar asset categories. Many of these Swiss securitisation transactions are refinanced through conduit platforms, rather than through the direct issuance of debt instruments to the private market.

Finally, in particular banks regularly look at and pursue synthetic securitisation transactions in various asset categories.

Regulation

4 Which body has responsibility for the regulation of securitisation?

There is no specific regulatory authority for securitisation transactions. However, various regulatory authorities are relevant in the context of Swiss securitisation transactions, such as the SIX Exchange Regulation of the SIX Swiss Exchange for listing-related matters, the Swiss Financial Market Supervisory Authority (FINMA) for certain regulatory matters (ie, confirmation of non-licensing requirements, non-consolidation in bankruptcy, non-application of anti-money laundering considerations (depending on the structure of the transaction and the underlying asset category), in each case as relevant) and cantonal regulators for consumer credit licensing, if relevant. In addition, transactions are typically presented and signed off by relevant tax authorities by way of tax ruling.

5 Must originators, servicers or issuers be licensed?

No, given that there is no specific securitisation legislation, there is no licensing requirement for originators, servicers and issuers as such.

It is, however, important to carefully analyse each securitisation structure on a case-by-case basis, in particular in light of the specific underlying assets and the business conducted by the originator.

As an example, originators active in the consumer loan business must be licenced under the Swiss Consumer Credit Act. Accordingly, it is important to structure the transaction so that the issuer does not require a respective licence.

Typically, issuers do not require a licence as a bank under the Swiss Federal Banking Act, provided they are refinanced through the issuance of publicly placed (listed) bonds or privately placed notes. Also, issuers typically do not qualify as collective investment schemes under the Swiss Federal Act on Collective Investment Schemes given the focus on the refinancing through the issuance of public of private capital market instruments. Of course, this needs to be carefully analysed and structured on a case-by-case basis.

6 What will the regulator consider before granting, refusing or withdrawing authorisation?

This question is not relevant (see question 5).

7 What sanctions can the regulator impose?

This question is not relevant (see question 5).

8 What are the public disclosure requirements for issuance of a securitisation?

As there is no specific securitisation legislation in Switzerland, there are no public disclosure requirements that relate, as such, to issuances in the framework of securitisation transactions. Accordingly, when issuing securities to the public capital market in Switzerland, the general prospectus and listing requirements will have to be considered, depending on where and to what investor base the securities will be marketed.

9 What are the ongoing public disclosure requirements following a securitisation issuance?

As there is no specific securitisation legislation in Switzerland, there are no ongoing public disclosure requirements that relate, as such, to issuances in the framework of securitisation transactions. As any other issuer, issuing SPVs listed on the SIX Swiss Exchange will have to comply with general Swiss capital market regulations, such as the ad-hoc publicity as per the listing rules of the SIX Swiss Exchange.

As in any other jurisdiction, it is market standard that servicer reports and investors reports are provided on a monthly basis.

Eligibility

10 Outside licensing considerations, are there any restrictions on which entities can be originators?

No, there are no restrictions, other than licencing requirements relating to the underlying business.

11 What types of receivables or other assets can be securitised?

Swiss securitisation transactions have been based on trade receivables, commodity warehouse receipts, auto leases and loans, credit card receivables, residential mortgage loans, commercial real estate loans and loans to small and medium-sized businesses. There is no class of receivables that is more likely to be the subject of a securitisation in Switzerland, even though the market has recently seen many public transactions involving auto leasing and credit cards.

Accordingly, any type of asset can be securitised, but general considerations around suitability of assets for securitisations transactions apply in Switzerland as well.

12 Are there any limitations on the classes of investors that can participate in an offering in a securitisation transaction?

No. Transactions that are offered to the Swiss public capital market can be offered to any investor, including retail investors. However, it might be that certain lead managers apply considerations around investor suitability and might apply (internal) guidelines in the distribution process.

13 Who may act as custodian, account bank and portfolio administrator or servicer for the securitised assets and the securities?

As a matter of Swiss capital market regulations, the principal paying agent must qualify as a Swiss bank and must hold a Swiss banking licence. As a matter of Swiss law and on the basis that securitisation transactions typically do not qualify as collective investment schemes, there is no other mandatory requirement in relation to the custodian, the trustee or the portfolio administrator or servicer.

Having said this, the various roles are of course subject to rating agency requirements (in the case of rated deals) or subject to considerations and requests from investors.

14 Are there any special considerations for securitisations involving receivables with a public-sector element?

Other than in relation to the enforceability of the receivables as such, no special considerations apply for public-sector receivables. In the due diligence process, parties should focus in particular (as for any other securitisation transaction) on transferability and enforceability of the receivables as well as immunity considerations of the respective public institution.

Transactional issues

15 Which forms can special purpose vehicles take in a securitisation transaction?

The first question is whether to use a Swiss vehicle or a foreign vehicle. Various considerations should be made, depending on the underlying asset.

Generally, it will be very difficult to use non-Swiss SPVs where the underlying asset relates to real estate located in Switzerland, given that cantonal withholding taxes may be incurred on any interest payment secured by Swiss real estate.

Also, it might be the case that the transfer of a receivable or an asset abroad is not desirable for other reasons, such as data protection considerations, in particular where the underlying documentation does not provide for a proper waiver of data protection.

On the other hand, it should be noted that interest payments on debt instruments issued by a Swiss vehicle directly to multiple investors attract Swiss withholding tax at a rate of 35 per cent. While Swiss withholding tax is generally recoverable, the process for doing so might be burdensome for non-Swiss investors and even a Swiss investor would suffer a delay in recovering the withholding tax. In the case an investor is located in a jurisdiction that does not benefit from favourable double tax treaties or does not otherwise benefit from treaty protection (typically such as tax transparent funds), Swiss withholding tax might not be fully recoverable or not be recoverable at all. Swiss withholding tax can be structured away in the case a non-Swiss vehicle is used. However, this adds a lot of complexity to the structuring process given that there will also be a strong focus on the true sale analysis from a tax perspective.

Finally, Swiss originators that do not form a presence abroad normally have the inclination to go with a Swiss SPV for cost-efficiency and organisational purposes.

In Switzerland, a SPV may take the form of a *Aktiengesellschaft* (AG) limited liability stock corporation or a *Gesellschaft mit beschränkter Haftung* (GmbH) limited liability company.

16 What is involved in forming the different types of SPVs in your jurisdiction?

The formation of an AG or a GmbH is relatively straightforward and takes between two to four weeks, depending on the relevant cantonal commercial register involved. Minimum capitalisation for the AG is 100,000 Swiss francs and for the GmbH 20,000 Swiss francs. This is, however, most often irrelevant, given that originators quite often hold equity pieces in any event. Formation costs are minimal and would not exceed a couple of thousand Swiss francs.

Most often, Swiss SPVs are held by the respective originator (given that availability of charitable trust structures or similar structures is limited in Switzerland as such), but some rating agencies request the implementation of golden shareholder structures that provide the (independent) golden shareholder or shareholders with some control (veto rights) at the level of the shareholders meeting. Essentially all transactions involving Swiss SPVs provide for an independent director structure giving the independent director some control (veto rights) at the board level.

17 Is it possible to stipulate which jurisdiction's law applies to the assignment of receivables to the SPV?

Yes, under Swiss conflict of law rules, the transfer and assignment of a right or a receivable can generally be governed by the law chosen by the parties. However, according to article 145 of the Swiss Private International Law Act, a choice of a law in favour of a law other than the law governing the underlying right or receivable may not be asserted against the underlying obligor under the assigned receivable, unless such obligor agreed to such choice of law. Hence, absent such consent, the general approach is to have the assignment and transfer governed by the law of the underlying right or receivable.

18 May an SPV acquire new assets or transfer its assets after issuance of its securities? Under what conditions?

Yes, revolving securitisation transactions involving the ongoing acquisition of new assets to the SPV to replenish the asset pool held by the SPV are quite common in Switzerland. There are no specific conditions, other than conditions that are inherent to the transaction as such, like compliance with eligibility criteria, compliance with concentration limits, absence of performance trigger events or absence of other early amortisation events.

While the ongoing acquisition of assets is seen often in Swiss transactions, the transfer of assets of the SPV after the issuance of its securities is generally limited by standard no-disposal undertakings. Such no-disposal undertakings allow the SPV to dispose of assets held by it in compliance with the relevant collections policies only. In addition, the corporate purpose of SPVs is typically limited so that the SPV may only contract within the scope of the transaction documents. Accordingly, the limited corporate purpose does limit the risk that the asset SPV will dispose of its assets in breach of the no-disposal undertakings.

19 What are the registration requirements for a securitisation?

There are no registration requirements as such, but the SPV (as any other legal entity) must be registered with the competent commercial register. Also, if the originator is a regulated entity (such as a licensed bank), further approval requirements may apply.

20 Must obligors be informed of the securitisation? How is notification effected?

Provided that the underlying agreements between the obligors and the originator allow for the free assignment and transfer of the receivable or relevant asset, the obligors do not need to be informed of the assignment and transfer and the securitisation accordingly. However, prior to notification, the obligors may validly discharge their obligations by paying the originator (acting on an undisclosed basis as servicer) and in the event of bankruptcy of the originator, such payments would form part of the bankrupt estate of the originator, until the obligors are notified (see also question 28 on commingling). Also, a valid and unconditional assignment and transfer to the SPV requires that the SPV may notify the obligors at any point in time, even when it is the general understanding of the parties that obligors shall only be notified upon occurrence of a specific notification event. This requires the delivery of names and addresses of obligors to the SPV and the contractual right of the SPV to notify prior to the occurrence of a notification event.

21 What confidentiality and data protection measures are required to protect obligors in a securitisation? Is waiver of confidentiality possible?

Generally, a waiver of confidentiality and data protection is valid under Swiss law, even though the special requirements of the Swiss Data Protection Act and other relevant legislation must be followed. Special considerations must apply in the case the originator is subject to special confidentiality obligations, such as Swiss banking secrecy. Even though a waiver is generally valid, some originators apply a more severe standard as a matter of policy by using data trustee structures, in particular where information would otherwise be transferred abroad.

22 Are there any rules regulating the relationship between credit rating agencies and issuers? What factors do ratings agencies focus on when rating securitised issuances?

In Switzerland, the relationship between rating agencies and issuer is generally governed by the underlying engagement. It appears that the focus of rating agencies is not really different from the focus they apply in other jurisdictions. Accordingly, rating agencies focus on the performance of the underlying assets, such as default ratios, delinquency ratios and the underlying security. Another focus of rating agencies is generally the solvency of the servicer and the ability of the servicer to service the portfolio for the SPV (including due diligence on systems and processes). Of course, the focus may shift depending on the underlying asset. In addition, rating agencies focus on legal structure and any legal pitfalls, such as the true sale analysis in true sale transactions and the bankruptcy remoteness of the SPV.

23 What are the chief duties of directors and officers of SPVs? Must they be independent of the originator and owner of the SPV?

The board members (or directors) of the AG or the directors of a Swiss GmbH are ultimately responsible for the *Oberaufsicht* (overall management and supervision) of the company, a responsibility that cannot be withdrawn from and for which each individual director is ultimately liable according to article 754 et seq of the Swiss Code of Obligations. This duty includes:

- the overall direction of the company and issuing the necessary directives;
- determining the organisational structure of the company;
- appointing and dismissing the persons entrusted with management and representation and determining the method of signature;
- ultimate supervision of the persons entrusted with company management;
- organisation of accounting, financial control and financial planning, to the extent that the latter is necessary for management of the company;
- drawing up the annual report and the remuneration report;
- preparing for the general meeting and executing its decisions; and
- notifying the judiciary should the company become over-indebted.

More generally, pursuant to Swiss corporate law directors have the duty to act in the company's best interest. The best interest of a company is measured, inter alia, against a company's business purpose, which, in the context of a securitisation transaction, is typically limited to the entering into and the performance of its obligations under the transaction documents. Hence, any action outside of that scope might expose a director to liability. These duties are owed to the company. Directors may be held liable not only towards the company, but also towards shareholders and creditors of the company for any damage caused by an intentional or negligent breach of duties. Negligence covers all forms of negligence including *leichte Fahrlässigkeit* simple negligence in complying with a director's duties.

There is no Swiss legislation that would suggest that directors need to be independent, but it should be noted that the duty of care is always owed to the company, rather than to the shareholder or the originator. Also, as mentioned above, it is generally a requirement of rating agencies and investors that at least one board member is independent from the originator.

24 Are there regulations requiring originators and arrangers to retain some exposure to risk in a securitisation?

There are no risk retention rules in Switzerland. In particular, Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR) (amending Regulation (EU) No. 648/2012)), including Part 5 has not yet been adopted by Switzerland and transposed into Swiss law.

However, for the purposes of not negatively affecting distribution, a number of transactions impose covenants on the originator to retain, on an ongoing basis, a material net economic interest in the transaction in an amount equal to at least 5 per cent (or such higher percentage as may be required from time to time in accordance with the applicable Risk Retention Rules) of the nominal value of the assets as required pursuant to article 405(1)(d) of the CRR and article 51 of the Commission Delegated Regulation No. 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision as though the respective legal framework had been implemented in Switzerland.

Security

25 What types of collateral/security are typically granted to investors in a securitisation in your jurisdiction?

Typically, investors ask for a comprehensive security package over the assets held by the SPV, even though an investor should be able to rely on its (exclusive) indirect access to the assets held by the SPV on the basis of the bankruptcy remoteness analysis that applies to an SPV. Thus, security packages often include the underlying receivables, bank accounts and claims under transaction agreements.

26 How is the interest of investors in a securitisation in the underlying security perfected in your jurisdiction?

In relation to receivables and bank accounts, the execution of a security assignment agreement by the parties is sufficient to perfect the security interest in the receivables and the bank accounts. No notification is required, even though it is standard to notify the account bank, which is normally involved in the transaction in any event. However, prior to notification of the obligors, the obligors may validly discharge their obligations by paying the originator or the SPV, and in case of bankruptcy over the SPV, such payments would form part of the bankrupt estate of the SPV, until the obligors are notified.

For the purposes of avoiding insolvency risks in relation to the security agent or trustee and given that the concept of a security trust is not known under Swiss law, security is typically provided for the benefit of a security trustee that holds the security under an English law-governed trust for the benefit of the secured parties, even when the security agreement itself is governed by Swiss law.

27 How do investors enforce their security interest?

Given that security interest are normally held by a security trustee, enforcement steps are to be initiated by the security trustee and vary depending on the nature of the security interest. Enforcement in a receivable that is assigned for security purposes may be pursued by simply collecting the receivable from the obligor or selling a portfolio of receivables to a third-party investor.

28 Is commingling risk relating to collections an issue in your jurisdiction?

Yes, commingling is generally considered to be a risk in Swiss securitisation transactions as collections held in the originator's or servicer's account would form part of the bankrupt estate in a bankruptcy scenario, unless previously swept to the SPV.

Update and trends

It appears that there are no reforms pending in Switzerland that would specifically address securitisation transactions in Switzerland.

However, a significant development in the Swiss financial industry in general, and the Swiss debt capital market in particular, is the contemplated overhaul of the Swiss regulatory framework of financial markets. In a general attempt to bring the Swiss regulatory framework in line with international regulations, such as MiFID II and the EU Prospectus Directive, the Financial Market Infrastructure Act (FinMIA) entered into force on 1 January 2016 and it is further suggested that the Federal Financial Services Act (FinSA) and the Financial Institutions Act (FinIA) replace major portions of the existing regulations. Drafts of the FinSA and the FinIA have been presented by the Swiss Federal Council for consultation in 2014. In November 2015, the Swiss Federal Council released explanatory notes to the FinSA and the FinIA on the basis of feedback received during the consultation process. The drafts may be presented to the Swiss parliament in 2016. The FinSA and the FinIA shall strengthen client protection, promote competitiveness of the Swiss financial centre and, by creating a level playing field, competitive distortions between providers shall be minimised.

More specifically, the FinSA will govern the relationship between financial intermediaries and their clients with respect to all financial products. Financial service providers will have to seek and take into account necessary information on the financial situation, knowledge and experience of the client when rendering advice. Further, the FinSA will introduce new uniform prospectus requirements for all securities that are publicly offered or traded on a Swiss trading platform, including securities issued under securitisation transactions. Also, there will be a new general requirement to produce a basic information sheet for each financial product that can be presented to retail clients. Private actions in the event of misconduct by financial service providers shall be improved; this includes the introduction of an ombudsman service. The ombudsman is contemplated to act exclusively as a mediator and will not get any decision-making powers. Also, the introduction of either a court of arbitration or a fund for litigations costs is envisaged.

The FinIA will unify the supervision of all financial service providers that are active in the asset management business in whatever form. Existing licensing requirements for financial service providers and financial institutions that are now widespread in various bodies of law will be embedded in the FinIA, while essentially remaining unchanged as to substance, save for further alignments, as appropriate. In addition, new licensing requirements will be introduced for managers of individual client assets and managers of assets of Swiss occupational benefits schemes. Asset managers shall be supervised by the Swiss Financial Market Supervisory Authority (FINMA). In relation to other asset managers, it is still unclear whether these will be subject to supervision by FINMA or by one or, under certain conditions, several supervisory authorities.

As mentioned above, interest payments by Swiss issuers under collective fundraising transactions (such as bonds) are subject to Swiss withholding tax at a rate of 35 per cent. While Swiss investors may claim back the 35 per cent relatively easily – but with a delay as to timing, the reimbursement process for foreign investors is more burdensome. Also, depending on the jurisdiction of the investors and further depending on the legal structure of the investors, Swiss withholding tax may be claimed back only in part, if at all. This imposes a limitation on Swiss issuers to access the international debt capital markets. Exemptions are only available (temporarily) for certain types of debt qualifying as regulatory capital (such as CoCos issued by systemic relevant banks ('too big to fail' banks) as well as certain write-off and bail-in bonds). In an attempt to discourage bond issuances by Swiss groups abroad and to strengthen the Swiss market, Switzerland is about to consider fundamental changes to its withholding tax system. On 24 August 2011, the Swiss Federal Council proposed new legislation under which the current deduction of Swiss withholding tax of 35 per cent by the issuer of bonds on interest payments at source would have been substituted for a respective deduction by Swiss paying agents (subject, in principle, to an exception for foreign investors). It was initially expected that the new regime would enter into force in the course of 2015 or 2016. However, in view of the negative outcome of the consultation on the draft legislation in the course of 2014 and 2015, the Swiss Federal Council decided, on 24 June 2015, to postpone a complete overhaul of the Swiss withholding tax regime, as originally planned. It now remains to be seen when and, if so, under which form, the withholding tax reform will be launched again. The paying agent principle should be discussed again before the planned exemptions for CoCos, write-off and bail-in bonds expire. It can be expected that a general change in the Swiss withholding tax system will further boost the Swiss securitisation market.

Commingling risk is typically addressed by imposing relatively short time periods to sweep collections to the collection account of the SPV. Some transactions provide for shortened periods to sweep the collections upon and after the occurrence of certain commingling risk triggers.

As the commingling risk would fall away as soon as obligors pay directly to a collection account held by the SPV, notification events are typically structured to occur at a relatively early stage in the process so that obligors may be notified well ahead of a potential bankruptcy of the originator.

Commingling risk is further mitigated by setting up servicing facilitator or even (warm or cold) back-up servicer structures, which aim at keeping the redirection period (ie, the time period that it would take to make obligors paying directly to a collection account held by the SPV) as short as possible.

Finally, rating agencies and investors sometimes ask for commingling reserves. The size of the reserves depends on the expected average amount of collections held in the collection account (calculated on the basis of the cash flow model) of the originator and the expected redirection period.

Taxation

29 What are the primary tax considerations for originators in your jurisdiction?

From an originator's overall tax perspective, it is, among other things, absolutely imperative that:

- the respective assets or receivables can be transferred to the issuer without accelerating and triggering any income taxes; and
- the profit potential associated with the underlying business remains with the originator.

For lack of specific tax legislation or tax guidelines, or both, securitisation transactions need to be presented and signed off by the relevant tax authorities by way of advance tax rulings. Typically, a (separate) VAT ruling will cover the following topics: VAT (non-)taxation of the transfer of assets or receivables, tax point acceleration with respect to VAT due on supplies with respect to transferred assets or receivables and bad debt relief.

30 What are the primary tax considerations for issuers in your jurisdiction? What structures are used to avoid entity-level taxation of issuers?

In the case the transaction involves a Swiss issuer, it is, among other things, absolutely imperative that the additional entity-level corporate income and net equity taxes, which cannot be structured away completely, are kept at a (negligible) minimum. In practice, the effective tax burden can be reduced to few thousand Swiss francs per year, subject to proper tax structuring. For lack of specific tax legislation or tax guidelines, or both, securitisation transactions need to be presented and signed off by the relevant tax authorities by way of advance tax rulings. Typically, a (separate) VAT ruling will cover the following topics: mitigation of VAT costs or leakage on VAT-loaded bought-in services, or both, including servicing, and mitigation of joint and several liability issues relating to VAT unpaid by the originator with respect to transferred assets or receivables.

31 What are the primary tax considerations for investors?

Interest payments on debt instruments (such as bonds) issued by a Swiss (securitisation) vehicle directly to widely spread investors attract Swiss withholding tax at a rate of 35 per cent. While Swiss withholding tax is generally recoverable, the process for doing so might be burdensome for non-Swiss investors, and even a Swiss investor would suffer a delay in recovering the withholding tax. In the event an investor is located in a jurisdiction that does not benefit from a favourable double tax treaty with Switzerland or does not otherwise benefit from treaty protection (typically such as tax transparent funds), Swiss withholding tax might not be fully recoverable or not be recoverable at all.

Swiss withholding tax can be structured away in the event a non-Swiss vehicle is used. However, this adds a lot of complexity to the structuring process given that there will also be a strong focus on the true sale analysis from a tax perspective.

Bankruptcy

32 How are SPVs made bankruptcy-remote?

Bankruptcy remoteness is generally achieved by the limited corporate purpose of the SPV and limited recourse and non-petition provisions to which counterparties to the SPV are asked to sign up. In addition, all parties contracting with the SPV are asked to sign up to waive of set-off provisions.

In addition, it should be noted that as a matter of Swiss corporate law, the bankruptcy of a shareholder of the SPV will not lead to the bankruptcy or liquidation of the SPV itself. Rather, the bankruptcy of the shareholder would result in the shares in the SPV falling into the bankruptcy estate of the shareholder and would be sold in the course of such liquidation or bankruptcy. Any such transfer of shares in the SPV would not legally affect the contractual obligations of the SPV under the transaction documents. Also, there is no concept of substantive consolidation under Swiss law (subject to extraordinary cases, such as fraud and abuse of rights), and a bankruptcy of a shareholder of the SPV would, as a matter of Swiss law, not result in a consolidation of its assets and liabilities with those of the SPV.

33 What factors would a court in your jurisdiction consider in making a determination of true sale of the underlying assets to the SPV (eg, absence of recourse for credit losses, arm's length)?

Ultimately, a court would consider the actual mutual will of the parties to a specific agreement. Accordingly, the analysis is highly factual, but one of the important factors that will be considered by a court is the effective transfer of the collection risk relating to a receivable. Accordingly, any repurchase obligations that would go beyond the repurchase of receivables that have been ineligible upon the transfer to the SPV can be critical. However, repurchase options are generally less problematic, but should be considered on a case-by-case basis. Finally, the at arm's length nature of the transfer as such will also be considered.

34 What are the factors that a bankruptcy court would consider in deciding to consolidate the assets and liabilities of the originator and the SPV in your jurisdiction?

As mentioned above, there is no concept of substantive consolidation under Swiss law, unless there are very extraordinary cases, such as fraud and abuse of rights.

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ISSN 2058-5594

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