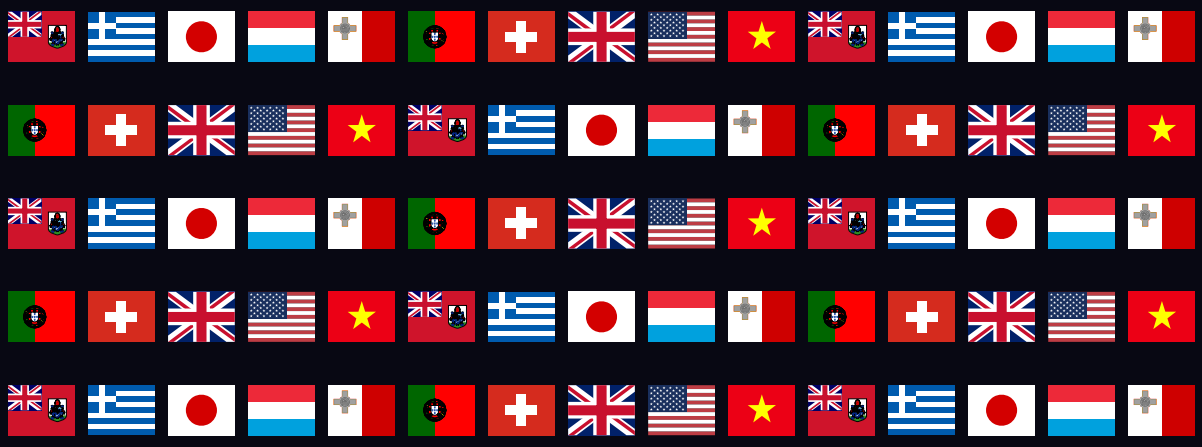
STRUCTURED FINANCE & SECURITISATION

Switzerland



LEXOLOGY
Getting The Deal Through

Consulting editor
Cadwalader Wickersham & Taft LLP

Structured Finance & Securitisation

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into the legislative framework and local market climate; regulatory bodies, requirements and sanctions; eligibility considerations (for parties and assets); execution issues from permissible types of SPV to risk retention requirements; security, taxation and bankruptcy considerations; and recent trends.

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GENERAL FRAMEWORK

Legislation

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 (particularly in matters relating to the formation of the special purpose vehicle (SPV) and the transfer of receivables and the asset), general capital markets regulations and regulatory and tax regulations. However, a practice has evolved over time that ensures that securitisation transactions are viewed favourably by competent authorities being willing to issue advance ruling confirmations about the regulatory and other treatment of securitisation transactions (eg, Swiss Financial Market Supervisory Authority rulings, consumer credit regulations rulings and tax rulings).

Also, no specific listing rules apply to asset-backed securities, and the SIX Swiss Exchange generally applies the same listing rules as for issuance of bonds. However, issuing SPVs benefits from certain relaxed standards in the approval process. Also, the Swiss prospectus regime under the Swiss Financial Services Act (FinSA) provides for some (limited) special disclosure rules for ABS.

Law stated - 06 December 2022

Applicable transactions

Does your jurisdiction define which types of transactions constitute securitisations?

Not applicable.

Law stated - 06 December 2022

Market climate

How large is the market for securitisations in your jurisdiction?

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 increased substantially in the auto lease and credit card sectors during the past couple of years and continues to be stable. The main originators of public asset-backed security (ABS) and auto lease transactions include Cembra (formerly GE Money Bank), AMAG Leasing (leasing Volkswagen brands), Emil Frey (leasing Toyota, Jaguar and other brands) and Swisscard (credit cards). In addition, there have been an increasing number of private ABS transactions in a variety of asset classes.

As a consequence of the overall growing volume of residential and commercial mortgage loans in Switzerland, the number of mortgage-backed transactions in Switzerland is expected to increase in the future, supplementing the management of mortgage loan portfolios, which had in the past frequently served as collateral for covered bond transactions, rather than being securitised. However, also covered bond transactions in Switzerland involving residential and commercial mortgage loans have increased considerably during the past couple of years and this trend is expected to continue in the future. Also, market lending platforms continue to grow and are eagerly looking at refinancing opportunities, including ABS or ABS-like structures.

A number of private ABS transactions (ie, transactions that are refinanced through asset-backed commercial paper platforms or through direct investors or banks) have been extended and renewed. Also, the number of trade receivable securitisation transactions involving Swiss receivables or Swiss sellers, or both, has increased.

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

Law stated - 06 December 2022

REGULATION

Regulatory authorities

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 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), the prospectus offices that have been newly introduced by the Swiss Financial Services Act in 2020 and appointed by FINMA in June 2020 for prospectus approvals, the SIX Exchange Regulation of the SIX Swiss Exchange for certain other listing-related matters 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.

Law stated - 06 December 2022

Licensing and authorisation requirements

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, particularly 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 licensed under the Swiss Consumer Credit Act unless certain exemptions apply, such as exemptions for captive service providers. 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 refinancing through the issuance of public or private capital market instruments. Indeed, this needs to be carefully analysed and structured on a case-by-case basis.

Law stated - 06 December 2022

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

Not applicable.

Law stated - 06 December 2022

Sanctions

What sanctions can the regulator impose?

Not applicable.

Law stated - 06 December 2022

Public disclosure requirements

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

There is no specific securitisation legislation in Switzerland, but the Swiss Financial Services Ordinance (FinSO) contains some limited disclosure requirements specifically relating to asset-backed security (ABS). According to these requirements, disclosure in the prospectus must include (in addition to the general disclosure requirements)

- a transaction summary, covering:
  - the general characteristics of the structure and a structure overview;
  - risks related to an investment in the ABS;
  - cross-references to the specific sections in the prospectus dealing with such risks; and
- a transaction overview, covering:
  - key elements of the transaction (ie, structure, parties involved and their role, cash flows, credit enhancement, etc);
  - a description of the assets that back the transaction and related risks;
  - historical key date (three years) relating to the relevant assets;
  - structural risks;
  - legal risks; and
  - other significant risks.

Accordingly, when issuing securities to the public capital market in Switzerland, the above-limited disclosure requirements as well as the general prospectus and listing requirements must be considered, depending on where and to what investor base the securities will be marketed. Of course, to the extent that Swiss securitisation transactions are placed outside of Switzerland or become otherwise subject to the EU Securitisation Regulation, the transactions must be structured to ensure compliance with the EU Securitisation Regulation or other non-Swiss regulations that might apply.

Law stated - 06 December 2022

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

There is no specific securitisation legislation in Switzerland. Also, neither FinSO nor the listing rules of the SIX Swiss Exchange provide for specific public disclosure requirements that relate, as such, to issuances in the framework of securitisation transactions. As with any other issuer, issuing SPVs listed on the SIX Swiss Exchange must comply with general Swiss capital market regulations, such as ad hoc publicity as per the listing rules of the SIX Swiss Exchange.

Like any other jurisdiction, it is market standard practice that servicer reports and investors' reports are provided on a

monthly basis.

Finally, to the extent that any non-Swiss regulation would be applicable (such as the EU Securitisation Regulation), such regulations must, of course, be complied with.

Law stated - 06 December 2022

ELIGIBILITY

Originators

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

No restrictions exist, other than licensing requirements relating to the underlying business.

Law stated - 06 December 2022

Receivables

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 than others 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.

Covered bond transactions in Switzerland had been traditionally based on Swiss residential mortgage loans and commercial mortgage loans and in the more recent past also on auto lease assets.

Law stated - 06 December 2022

Investors

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, in principle, be offered to any investor, including retail investors. However, the financial intermediaries who are involved in the placement of the notes will need to comply with their duties under financial market laws (such as the Financial Services Act (FinSA)), including in relation to the assessment of appropriateness and suitability of such products for the investors, as applicable. In addition, it might be that certain lead managers apply (internal) guidelines in the distribution process. Further

restrictions may apply under relevant foreign capital market regulations that would have to be complied with in connection with any placement of securitisation transactions outside Switzerland.

Law stated - 06 December 2022

Custodians/servicers

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

According to the SIX Swiss Exchange's listing rules, the principal paying agent must qualify as a Swiss bank or a Swiss broker or dealer licensed by the Swiss Financial Market Supervisory Authority. 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.

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

Law stated - 06 December 2022

Public-sector involvement

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

Except in relation to the enforceability of the receivables, 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.

Law stated - 06 December 2022

TRANSACTIONAL ISSUES

SPV forms

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

First, it should be decided 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 and due to restrictions under the Federal Act on the Acquisition of Real Estate by Persons Abroad (known as the Lex Koller" that will have to be considered.

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, particularly where the underlying documentation does not provide for a proper waiver of data protection.

Furthermore, 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. If an investor is located in a jurisdiction that does not benefit from favourable double tax treaties or does not otherwise benefit from treaty protection (such as tax-transparent funds), Swiss withholding tax might not be fully recoverable, if at all. Swiss withholding tax can be structured away if a non-Swiss vehicle is used. However, this adds much complexity to the structuring process because 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, an SPV may take the form of a limited liability stock corporation (AG) or a limited liability company (GmbH).

Law stated - 06 December 2022

SPV formation process

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

The formation of an AG or GmbH is relatively straightforward and takes between two and 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, often irrelevant, because originators frequently hold equity pieces instead. Formation costs are minimal and would not exceed a couple of thousand Swiss francs.

Typically, Swiss SPVs are held by the respective originator (given that availability of charitable trust structures or similar structures is limited in Switzerland), 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. However, accounting considerations may require the SPV to be held by fully independent shareholders. Essentially, all transactions involving Swiss SPVs provide for an independent director structure giving the independent director some control (veto rights) at board level.

Law stated - 06 December 2022

Governing law

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 concerned. However, according to article 145 of the Swiss Private International Law Act, the choice of a law to govern the assignment that is different from the law that is governing the underlying right or receivable may not be asserted against the underlying obligor under the assigned receivable, unless the obligor agreed to the choice of law. Therefore, consent being absent, the general approach is to have the assignment and transfer governed by the law of the underlying right or receivable.

Law stated - 06 December 2022

Asset acquisition and transfer

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 replenishing its asset pool are quite common in Switzerland. There are no specific conditions, except conditions inherent to the transaction such as:

- compliance with eligibility criteria;
- compliance with concentration limits;
- absence of performance-trigger events; or
- absence of other early amortisation events.

While continued acquisition of assets is often seen in Swiss transactions, the transfer of assets by the SPV after the issuance of its securities is generally limited by standard non-disposal undertakings. Such non-disposal undertakings allow the SPV to dispose of assets held by it in compliance with the relevant collections' policies only, or in compliance with, the transaction documents (eg, mandatory repurchases). Additionally, 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 limits the risk that the asset SPV will dispose of its assets in breach of the non-disposal undertakings.

Law stated - 06 December 2022

Registration

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. For public transactions capital market regulations apply, which, however, do not treat securitisation transactions differently.

Law stated - 06 December 2022

Obligor notification

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 to 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. 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 on occurrence of a specific notification event. To be on the safe side, it is recommended that the names and addresses of obligors are provided to the SPV. Also, the SPV must be granted the contractual right to notify obligors prior to the occurrence of a notification event.

Law stated - 06 December 2022

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 (a revised version of which will come into force as of 1 September 2023) and other relevant legislation must be followed.

Special considerations must apply if 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.

Law stated - 06 December 2022

Credit rating agencies

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). Undoubtedly, 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.

Law stated - 06 December 2022

Directors' and officers' duties

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 responsible for the overall management and supervision of the company and directors may be held liable according to article 754 et seq of the Swiss Code of Obligations for the intentional or negligent breach of their duties.

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. 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 simple negligence in complying with a director's duties.

There is no Swiss legislation suggesting 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 required of rating agencies and investors that at least one board member is independent from the originator. Further independence requirements may be imposed, depending on the target accounting structure.

Finally, if a transaction must receive a specific accounting treatment (eg, off-balance sheet treatment), further requirements as to the independency of directors and officers might apply.

Law stated - 06 December 2022

Risk exposure

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, article 6(1) of the European Union regulation 2017/2402 has not 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 a higher percentage as may be required from time to time in accordance with the applicable EU risk retention rules).

Law stated - 06 December 2022

SECURITY

Types

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.

Therefore, security packages often include the underlying receivables, bank accounts and claims under transaction agreements. However, it should be noted that some transactions have been structured without a security package to overcome a negative tax treatment or other obstacles. In those transactions, the bankruptcy-remoteness analysis was considered to be robust enough for investors and rating agencies to rely on an unsecured structure.

Law stated - 06 December 2022

Perfection

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 the event of bankruptcy over the SPV, such payments would form part of the bankrupt estate of the SPV, until the obligors are notified.

Law stated - 06 December 2022

Enforcement

How do investors enforce their security interest?

Given that security interest is 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.

Law stated - 06 December 2022

Commingling risk

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

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

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

Because the commingling risk falls away as soon as obligors pay directly into 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 an originator's potential bankruptcy.

Commingling risk is further mitigated by setting up servicing facilitator or even (warm or cold) back-up servicer structures, aimed at keeping the redirection period (ie, the time period needed to make obligors pay directly into an SPV-held collection account) as short as possible.

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

Law stated - 06 December 2022

TAXATION

Originators

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; and
- receivables and bad debt relief.

Law stated - 06 December 2022

Issuers

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

If the transaction involves a Swiss issuer, it is, among other things, 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 a 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.

Law stated - 06 December 2022

Investors

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 that 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 that 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.

Law stated - 06 December 2022

BANKRUPTCY

Bankruptcy remoteness

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 waiver 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, a shareholder bankruptcy would result in the SPV's shares 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 an SPV shareholder would, as a matter of Swiss law, not result in a consolidation of its assets and liabilities with those of the SPV.

Law stated - 06 December 2022

True sale

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 going beyond the repurchase of ineligible receivables during 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 arm's-length nature of the transfer will also be considered.

Law stated - 06 December 2022

Consolidation of assets and liabilities

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?

There is no concept of substantive consolidation under Swiss bankruptcy law, except in extraordinary cases, such as fraud and rights' abuse.

Law stated - 06 December 2022

UPDATE AND TRENDS

Key developments of the past year

Are there any rules governing securitisations pending in your jurisdiction or reforms under way, such as prohibitions on financial firms betting against the securities they package, improved disclosure and oversight of the asset-backed securities market, rules limiting bank compensation structures that incentivise risk, etc?

There have been no such developments in the past year that are specifically related to securitisation transactions.

Law stated - 06 December 2022

What legislation or government or industry initiatives are in place or contemplated to address the termination of LIBOR and transition to a substitute rate?

In 2013 the National Working Group on Swiss Franc Reference Rates (NWG) was created by the Swiss National Bank (SNB). The NWG is the key forum to foster the transition to Swiss Average Rate Overnight (SARON) and to discuss the latest international developments. As from October 2017, the NWG recommended SARON as the alternative to Swiss franc LIBOR and established two sub-working groups to focus on a possible transition away from LIBOR in loan and deposit markets as well as in derivatives and capital markets. Since then, the NWG had issued multiple recommendations that were largely accepted in the Swiss market. The London Interbank Offered Rate (LIBOR) was discontinued for Swiss franc by the end of 2021.

Law stated - 06 December 2022

Jurisdictions

Bermuda	Walkers
Greece	Karatzas & Partners Law Firm
Japan	Nagashima Ohno & Tsunematsu
Luxembourg	Vandenbulke
Malta	GVZH Advocates
Portugal	VdA
Switzerland	Walder Wyss Ltd
United Kingdom	Cadwalader Wickersham & Taft LLP
USA	Cadwalader Wickersham & Taft LLP
Vietnam	VILAF