
CHAMBERS GLOBAL PRACTICE GUIDES

Securitisation 2025

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Switzerland: Law and Practice & Trends and Developments

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SWITZERLAND



Law and Practice

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Walder Wyss Ltd is a leading law firm in Switzerland with around 290 legal experts across offices in Zurich, Basel, Berne, Geneva, Lausanne and Lugano, including a team of six partners and 12 associates for Swiss securitisation transactions. The firm has been involved in almost all Swiss first-time transactions (first Swiss RMBS transaction for Zürcher Kantonalbank 2001, first covered bond transaction for UBS AG 2009, first insurance-linked synthetic transaction for FIFA 2006, etc) and continues to be involved in most public and private ABS transactions, synthetic transactions, covered

bond transactions and other securitisations, in particular in auto lease ABS (and consumer lending more generally) and mortgage loan transactions. Walder Wyss is regularly retained by market participants, including Swisscard, Cembra Money Bank, AMAG Leasing, Multilease, Ford Credit, PSA, BMW Schweiz, Credit Suisse, UBS and Goldman Sachs. The firm is also active in relation to various regulatory initiatives in the structured finance area and is part of a larger working group led by the Swiss Bankers Association.

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1. Specific Financial Asset Types

1.1 Common Financial Assets

Securitisation transactions in Switzerland have in the past primarily been based on trade receivables, auto leases and loans, credit card receivables, residential mortgage loans, commercial real estate loans and loans to small and medium-sized businesses.

More recently, the market has seen a large number of public securitisation transactions involving auto lease receivables and credit card receivables. In addition, privately placed securitisation transactions are regularly implemented in Switzerland. Whilst in principle any type of asset can be securitised, general considerations around suitability of assets for securitisations transactions also apply in Switzerland.

Covered bond transactions in Switzerland have been traditionally based on Swiss residential and commercial mortgage loans and, more recently, also on auto lease assets. Due to the increasing volume of residential and commercial mortgage loans in Switzerland, the number of covered bond transactions and securitisation transactions in Switzerland involving residential and commercial mortgage loans is expected to continue to grow in the future.

1.2 Structures Relating to Financial Assets

Securitisation transactions in Switzerland are usually structured as (legal) true sale transactions in which a (domestic or foreign) bankruptcy remote special purpose entity (SPE) purchases a pool of income-generating assets and issues the notes. The notes are either publicly placed and listed or privately placed. The proceeds from the issuance of the notes are used by the SPE to acquire the initial pool of assets from

the originator upon the issuance of the notes. The securitisation structures then typically provide for a revolving period during which the SPE acquires additional assets from the originator fulfilling predefined eligibility criteria and thereby replenishing the asset pool on a regular basis. The replenishment period is followed by an amortisation phase, during which the notes are amortised over time using the proceeds from the asset pool, unless the originator repurchases the asset pool at the end of the revolving period and the notes are repaid in full using the proceeds from the repurchase by the originator at that time. Transaction parties involved in Swiss securitisation transactions regularly include asset and corporate servicers for the SPE, security and note trustees, cash managers, account banks and further third-party service providers, in addition to the arrangers and managers who are usually involved in structuring the securitisation transaction.

1.3 Applicable Laws and Regulations

Switzerland has not enacted any specific primary legislation covering securitisation (or covered bond) transactions. Instead, securitisation and covered bond transactions in Switzerland have been developed and are structured under the general legal and regulatory framework relevant as for any other financing transaction, such as the Swiss Code of Obligations (eg, relating to the formation of the SPE and the transfer of receivables and assets), the Swiss Civil Code (eg, relating to security interests), general capital market regulations and regulatory and tax laws.

1.4 Special Purpose Entity (SPE) Jurisdiction

Securitisation transactions in Switzerland can be structured using either Swiss or foreign SPEs. However, various considerations typically need to be made when deciding whether a Swiss or

foreign SPE is used, which depend in particular on the underlying assets that are being securitised.

In particular, in a transaction where the underlying asset relates to real estate located in Switzerland, special care must be given when using non-Swiss SPEs due to restrictions under the Federal Act on the Acquisition of Real Estate by Persons Abroad (known as the “Lex Koller”) and also owing to the fact that special cantonal withholding taxes may be incurred on any interest payment secured by Swiss real estate.

In addition, interest payments on debt instruments issued by a Swiss SPE (or a Swiss originator in the case of a covered bond) are typically subject to Swiss withholding tax at a rate of 35%. Structuring a transaction using non-Swiss SPEs in view of the Swiss withholding tax is in principle possible but adds much complexity to the structuring process and care must be given in view of a strong focus on the true sale analysis from a tax perspective.

Furthermore, Swiss originators that do not have any presence abroad typically prefer the use of a Swiss SPE for cost-efficiency and organisational purposes.

1.5 Material Forms of Credit Enhancement

Swiss securitisation transactions can benefit from various forms of credit enhancement, including subordination, over-collateralisation and cash reserves, subject to structuring considerations on a case-by-case basis.

2. Roles and Responsibilities of the Parties

2.1 Issuers

The issuer in securitisation transactions is a (Swiss or foreign) SPE that is structured in a bankruptcy remote way, acquires the assets to be securitised from the originator and issues debt financial instruments.

In contrast, in Swiss covered bond transactions, the issuers are operating entities that originate the assets serving as cover pool (such as banks as originators of residential and commercial mortgage loans) and transfer such cover pool assets to the guarantor for security purposes.

2.2 Sponsors

As Switzerland has not adopted any securitisation legislation, there are no specific responsibilities or roles that would be assigned to a sponsor in Swiss securitisation transactions. The term “sponsor” is thus commonly referring to the originator as the entity that originates the underlying assets and initiates the securitisation transaction.

2.3 Originators/Sellers

Originators in Swiss securitisation transactions are typically operating entities that generate the underlying assets to be securitised. In the course of the securitisation transaction, they transfer the assets to be securitised to an SPE against payment of the considerations. Typically, also the servicing of the assets is delegated by the SPE to the originator as the initial servicer.

Recently, the main originators of public ABS have been active in the auto leasing business and credit card business. In addition, there have been an increasing number of private ABS transactions with originators being active in a vari-

ety of businesses and including various asset classes.

2.4 Underwriters and Placement Agents

The underwriters or managers, which are often investment banks, typically enter into a subscription agreement with the issuer, under which they agree to purchase the debt instruments issued by the issuer against payment of the issue price and then place them with the investors. The underwriters thereby act as an intermediary between the issuer and the investors in an offering.

2.5 Servicers

The servicer is appointed by the SPE to collect and enforce the transferred receivables and to service the other underlying assets. The role of the servicer is typically assigned to the originator, subject to certain trigger events occurring, after which it will be replaced by a substitute servicer.

Given that there is no specific securitisation legislation in Switzerland, there is no licensing requirement for servicers as such, but the generally applicable regulatory and licensing requirements will need to be carefully analysed on a case-by-case basis, in particular in light of the specific underlying assets and the business conducted by the originator.

2.6 Investors

The investors acquire the financial instruments that are issued by the SPE.

2.7 Bond/Note Trustees

Swiss public securitisation transactions typically provide for the appointment of a note trustee that normally also acts as sole representative of each class of notes for the purposes of the Swiss law bondholder provisions. The form of the

appointment of the note trustee and the scope of its rights and obligations are determined in the securitisation documentation, which is commonly subject to foreign law.

2.8 Security Trustees/Agents

The security trustee is appointed by the noteholders (and other secured parties) to hold and enforce the security interests in favour of such secured parties. The scope of the security trustee's rights and obligations and the form of its appointment (agency relationship or trust) is typically governed by a security trust deed that is subject to foreign law.

3. Documentation

3.1 Bankruptcy-Remote Transfer of Financial Assets

The transfer of Swiss law governed underlying assets is documented in Swiss law governed transfer documents, such as an asset sale agreement and transfer deeds. Such transfer documents lay out the mechanics of the transfer of title and perfection of such transfer, which depend on the asset class to be securitised and typically also include customary representations and undertakings regarding the originator, the assets and the underlying debtors.

3.2 Principal Warranties

The principal warranties provided by the originator and issuer in a Swiss securitisation transaction will depend on the assets to be securitised and the securitisation structure, but would typically include warranties regarding the status of the originator and issuer, the underlying assets (including the underlying agreements) and further warranties customarily provided in financing transactions.

3.3 Principal Perfection Provisions

The perfection steps for the transfer of the underlying assets to the SPE depend on the assets to be transferred. Under Swiss law, for the transfer and assignment of rights and receivables governed by Swiss law, an agreement and a written assignment declaration is required. Notification of the underlying debtor is not required. However, prior to notification of the obligors, the obligors may validly discharge their obligations by paying the originator or the SPE, and in the event of bankruptcy over the SPE, such payments would form part of the bankrupt estate of the SPE, until the obligors are notified.

In relation to the creation of security interests over receivables and bank accounts, the execution of a written 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.

3.4 Principal Covenants

The principal covenants of the originator and issuer in a Swiss securitisation transaction will depend on the assets to be securitised and the securitisation structure, but would typically cover those items that are also subject to principal representations.

3.5 Principal Servicing Provisions

The servicer is appointed by the issuer under a servicing agreement which typically provides, among others, for the following services:

- the collection of payments and recovery from the obligors and the transfer of such collections to the issuer;

- the enforcement of the underlying receivables;
- record keeping in relation to the securitised assets;
- overall administering of the securitised assets in line with the credit and collection policies of the originator; and
- the provision of servicer reports.

Upon the occurrence of pre-defined servicer termination events, the servicer will be replaced by a replacement servicer.

3.6 Principal Defaults

Typical events of defaults under the notes may include:

- the occurrence of an insolvency event with respect to the issuer;
- a payment default of the issuer on interest or principal of the most senior class of notes outstanding; and
- non-compliance with other obligations under the transaction documents.

Upon the occurrence of a default under the notes, the most senior class of noteholders typically have the right to instruct the note trustee to declare all outstanding amounts under the notes due and payable and to have the security provided enforced.

3.7 Principal Indemnities

The scope of indemnities provided to the issuer depends on the specific transaction but typically includes indemnities from the originator for losses and liabilities in connection with the securitised assets sold and of the servicer for losses and liabilities arising in connection with the servicing of the securitised assets.

3.8 Bonds/Notes/Securities

The terms and conditions of the notes are typically included in the note trust deed and normally include provisions relating to:

- the form and denomination of the notes;
- the status and priority of the notes;
- limited recourse and non-petition;
- covenants of the issuer;
- payments on the notes of interest and principal;
- redemption of the notes;
- priority of payments;
- bondholder provisions; and
- governing law and jurisdiction.

3.9 Derivatives

Depending on the underlying assets, the notes and the particularities of a transaction, Swiss securitisation structures may provide for the use of derivatives (such as swaps) to account for and mitigate, in particular, interest rate and foreign exchange risks.

3.10 Offering Memoranda

The prospectus regulations contained in the Swiss Financial Services Act (FinSA) and the Swiss Financial Services Ordinance (FinSO) provide that any person offering securities for sale or subscription in a public offering in Switzerland or any person seeking the admission of securities for trading in a trading venue as defined in the Financial Market Infrastructure Act (FinMIA) must first publish a prospectus. There are various exemptions available from the prospectus requirement (eg, based on the type of offering) and the prospectus requirements need to be analysed on a case-by-case basis. If a prospectus is required, it will need to be approved by a prospectus review body appointed by the Swiss Financial Market Supervisory Authority (FINMA). Whilst the approval will generally need

to be obtained in advance of the public offering, such approval may also be obtained after the public offering has started for certain debt instruments and under certain conditions. The approved prospectus will need to be published in accordance with FinSA.

4. Laws and Regulations Specifically Relating to Securitisation

4.1 Specific Disclosure Laws or Regulations

There is no specific securitisation legislation in Switzerland, but the FinSO contains limited disclosure requirements specifically relating to ABS. These rules provide for the disclosure in the prospectus (in addition to the general disclosure requirements) of (i) 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 (ii) a transaction overview, covering key elements of the transaction (ie, structure, parties involved and their role, cash flows and credit enhancement), 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.

The limited disclosure requirements outlined above will need to be complied with (in addition to the general prospectus and listing requirements) when issuing securities to the public capital market in Switzerland. To the extent that Swiss securitisation transactions are placed outside of Switzerland or become otherwise subject to Regulation (EU) 2017/2402 (the “Securitisation Regulation”), the transactions must be

structured to ensure compliance with the Securitisation Regulation or other non-Swiss regulations that might apply.

4.2 General Disclosure Laws or Regulations

The general disclosure regulations of the FinSO for debt instruments apply, which provide for the minimum disclosure content in the prospectus, including regarding the issuer, the securities, risks and admission to trading.

4.3 Credit Risk Retention

Swiss law does not provide for risk retention rules. In particular, Article 6(1) of the Securitisation Regulation has not been adopted by Switzerland and implemented into Swiss law.

However, in view of not negatively affecting distribution, transactions frequently 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% (or a higher percentage as may be required from time to time in accordance with the applicable EU risk retention rules).

4.4 Periodic Reporting

Switzerland has not adopted specific securitisation legislation. Also, neither FinSO nor the listing rules of the SIX Swiss Exchange provide for specific public disclosure requirements that relate, as such, only to issuances in the framework of securitisation transactions. Like with any other issuer, issuing SPEs listed on the SIX Swiss Exchange will need to comply with general Swiss capital market regulations, including the ad hoc publicity under the listing rules of the SIX Swiss Exchange. However, similar to other jurisdictions, it is market standard that servicer reports and investors' reports are provided on a monthly basis. Furthermore, to the extent that

any non-Swiss regulation would be applicable (such as the Securitisation Regulation), such regulations will need to be complied with.

4.5 Activities of Rating Agencies

It is market practice that credit ratings are obtained for notes issued in public ABS transactions in Switzerland from at least one internationally recognised rating agency. However, rating agencies are not regulated under Swiss law for securitisation activities.

4.6 Treatment of Securitisation in Financial Entities

The capital holding requirements for banks and account-holding securities firms in Switzerland are governed by, among others, the Capital Adequacy Ordinance (CAO) and the relating technical implementation provisions issued by the FINMA, in particular FINMA Circular 2017/07 (Credit Risks – Banks). These provide, among others, for technical rules in connection with the calculation of the minimum capital that applies for transaction in connection with the securitisation of credit risk and the applicable Basel minimum standards.

The rules for the investment of insurance companies of their assets in general and the tied assets (ie, assets required in order to cover claims arising from insurance contracts) are governed by, among others the Insurance Supervisory Act, the relating ordinances and implementation provisions issued by the FINMA (in particular FINMA Circular 2016/05 (Investment Rules – Insurance Companies)). These provide, among others, for technical rules in connection with the investment of insurance companies in securitised claims (such as ABS, MBS and CDO).

4.7 Use of Derivatives

There are no special laws or regulations that solely apply to the use of derivatives in securitisation transactions in Switzerland, but the general legal framework, in particular, the FinMIA, applies with respect to the use of derivatives in securitisation transactions.

4.8 Investor Protection

As Switzerland has not adopted specific securitisation legislation, the general legal framework also applies with respect to investor protection. This includes the prospectus regulation under the FinSO and FinSA, which aims at protecting the investors by, among others, providing for prospectus disclosure requirements in order to allow investors to make informed decisions when investing in public securitisation transactions and for the requirement to have the prospectus approved by a prospectus approval office.

4.9 Banks Securitising Financial Assets

Switzerland has not adopted specific legislation on the securitisation of banks, but the general legal and regulatory framework applies, in particular the Swiss Banking Act and the relating ordinances.

4.10 SPEs or Other Entities

SPEs in Switzerland may take the form of a limited liability stock corporation (AG) or a limited liability company (GmbH). As there is no specific legislation in Switzerland on securitisations, the general legal framework also applies to SPEs and other entities.

4.11 Activities Avoided by SPEs or Other Securitisation Entities

There is no specific securitisation legislation or legislation on covered bonds in Switzerland, and therefore there are no licensing require-

ments per se for SPEs, originators, servicers or other securitisation entities. However, every transaction needs to be analysed and structured carefully on a case-by-case basis in view of the general regulatory and licensing requirements under applicable financial market regulations, including the Swiss Federal Banking Act, the Swiss Federal Collective Investment Schemes Act and Swiss anti-money laundering regulations. Further, depending on the receivables and assets being securities or used as collateral for a covered bond and the regulatory status of the originator, additional regulations may be of relevance, including (but not limited to) the Consumer Credit Act (eg, credit card receivables or retail auto lease receivables being securitised), the Federal Law of 16 December 1983 on the Acquisition of Real Estate by Persons Abroad (Lex Koller) (eg, residential mortgage loans being securitised or used as collateral for a covered bond) or the Insurance Supervisory Act (in the case of licensed insurance companies acting as transaction parties).

4.12 Participation of Government-Sponsored Entities

There have been no public transactions in which government-sponsored entities participated in the Swiss securitisation market.

4.13 Entities Investing in Securitisation

Securitisation 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 FinSA), including in relation to the assessment of appropriateness and suitability of such products for the investors, as applicable. Furthermore, certain lead managers might apply (internal) guidelines in the distribu-

tion process. Additional 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 of Switzerland.

4.14 Other Principal Laws and Regulations

See 1.3 Applicable Laws and Regulations.

5. Synthetic Securitisation

5.1 Synthetic Securitisation Regulation and Structure

As Switzerland has not adopted specific securitisation legislation, the general legal and regulatory framework also applies to synthetic securitisations, which have to be analysed and structured on a case-by-case basis.

6. Structurally Embedded Laws of General Application

6.1 Insolvency Laws

As Switzerland has not adopted specific securitisation regulation, the general insolvency regime and regulation (in particular the Swiss Debt Enforcement and Bankruptcy Act (DEBA)) apply in Switzerland also to Swiss entities (such as issuers, originators and servicers) in securitisation transactions. Similar to other jurisdictions, the bankruptcy remoteness of the SPE is a key consideration when structuring a domestic securitisation transaction.

6.2 SPEs

Swiss SPEs are either held and controlled by shareholders unaffiliated with, and independent from, the originator and the other transaction parties (ie, orphan SPEs) or structured as (direct

or indirect) subsidiaries of the originator; in each case depending on the specific needs and goals of the originator and corresponding requirements from an accounting perspective in view of potential derecognition and deconsolidation. In the majority of the public transactions, the Swiss SPE is held by the respective originator, sometimes also providing for 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 SPEs provide for an independent director structure giving the independent director some control (veto rights) at board level.

As a matter of Swiss corporate law, the bankruptcy of a shareholder of the SPE will not automatically lead to the bankruptcy or liquidation of the SPE itself. Rather, a shareholder bankruptcy would result in the SPE's shares falling into the bankruptcy estate of the shareholder, which would be sold in the course of such liquidation or bankruptcy. Any such transfer of shares in the SPE would not legally affect the contractual obligations of the SPE 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 SPE shareholder would, as a matter of Swiss law, not result in a consolidation of its assets and liabilities with those of the SPE.

6.3 Transfer of Financial Assets

For the perfection steps required for a transfer, see 3.3 Principal Perfection Provisions.

6.4 Construction of Bankruptcy-Remote Transactions

Bankruptcy remoteness in Swiss securitisation transaction is generally achieved by the lim-

ited corporate purpose of the SPE and limited recourse and non-petition provisions to which counterparties to the SPE are asked to sign up to. In addition, all parties contracting with the SPE are asked to sign up to waiver set-off provisions.

6.5 Bankruptcy-Remote SPE

See 6.4 Construction of Bankruptcy-Remote Transactions.

7. Tax Laws and Issues

7.1 Transfer Taxes

The transfer of underlying assets that are frequently securitised in the Swiss market (such as auto lease receivables, credit card receivables and trade receivables) from the originator to the issuer is not subject to any transfer tax in Switzerland. However, it will need to be analysed on a case-by case-basis and typically advance tax ruling confirmations are obtained to confirm the tax treatment of the securitisation transactions.

7.2 Taxes on Profit

Swiss domestic SPEs are generally subject to corporate income and capital tax. If the transaction involves a Swiss SPE, it is therefore, among other things, required that the additional entity-level corporate income and net equity taxes, which cannot be structured away completely, are kept at a (negligible) minimum. Due to a 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.

7.3 Withholding Taxes

Interest payments on debt instruments issued by a Swiss vehicle directly to multiple investors attract Swiss withholding tax at a rate of

35%. 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.

7.4 Other Taxes

Swiss VAT should be analysed carefully in connection with securitisation transactions. For example, asset servicing may trigger Swiss VAT and, if the Swiss SPE holding the securitised assets is not registered for VAT purposes (and is not part of the VAT group of the originator), such VAT charge will constitute a leakage for the transaction. Furthermore, if VAT-charged receivables are transferred to an SPE, such transfer may trigger an acceleration of the tax point for VAT purposes. In addition, the originator may be denied bad debt relief for non-performing receivables transferred. If future receivables are transferred at a time when the tax point for VAT purposes has not yet been reached, a potential secondary joint liability of the acquiring SPE with the transferring originator may arise. Subject to careful structuring, these issues can be addressed and comfort can be obtained by advance tax ruling confirmations from the tax administration.

7.5 Obtaining Legal Opinions

It is market practice in Swiss securitisation transactions that legal opinions are being provided,

including in relation to selected tax aspects of the transaction.

8. Accounting Rules and Issues

8.1 Legal Issues With Securitisation Accounting Rules

Typical accounting topics in Swiss securitisation transactions frequently include the derecognition of the assets to be securitised from the balance sheet of the issuer and the non-consolidation of SPEs.

8.2 Dealing With Legal Issues

The accounting analysis and treatment of a securitisation transaction is performed separately from the legal analysis and accounting matters are not addressed in legal opinions in the Swiss market. However, transactions can usually be structured legally in a way that supports the accounting analysis on a case-by-case basis.

Trends and Developments

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SWITZERLAND TRENDS AND DEVELOPMENTS

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Overview

In 2024, the Swiss securitisation and covered bond market has again been very robust with numerous new Swiss ABS being issued, with the trend to more private placements in securitisations continuing compared to previous years and securitisations of trade receivables continuing to be a reliable source of funding for domestic originators. Also, there have been again several public issuances of domestic covered bonds under existing and new programmes, including under a CHF20 billion covered bond programme set up by a global Swiss bank.

Receivable Securitisations

In recent times, the securitisation of trade receivables and other claims (such as claims from the purchase or rental of mobile devices) has been frequently implemented by Swiss companies from various industries and has also been an important funding tool for CFOs in 2024.

Similar to other jurisdictions, receivable securitisation transactions in Switzerland are typically structured as true sale transactions, whereby the Swiss sellers sell, transfer and assign eligible receivables to a special purpose entity (SPE) usually located outside of Switzerland against payment of the purchase price. The SPE is financed by either issuing notes or other debt instruments to investors or warehousing loans or a combination of both. These transactions frequently involve multiple sellers of the operating group, which are located in multiple jurisdictions and are set up by using existing platforms of banks and other arrangers.

When implementing these transactions, there are a number of particularities that need to be considered from a Swiss law perspective, including (but not limited to) in relation to the assignment

of underlying receivables governed by Swiss law and tax considerations.

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, Article 145 of the Swiss Private International Law Act provides that 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 has agreed to the choice of law. As a consequence, consent being absent, the general approach is to have the assignment and transfer governed by the law of the underlying right or receivable.

Under Swiss substantive laws, the assignment and transfer of a Swiss-law-governed right or claim requires an agreement among the parties (such as a receivable purchase agreement) and a written assignment from the assignor to the assignee, which requires a wet ink signature (or a specific qualified electronic signature in the sense of Article 14, paragraph 2bis of the Swiss Code of Obligations).

Under Swiss substantive laws, a claim is freely assignable unless such assignment is prohibited by law, contractual arrangement or the nature of the claim. Thus, special consideration must typically be given, in particular as to whether there are contractual restrictions on assignment.

Typical tax considerations in receivable securitisation transactions involving Swiss entities include Swiss federal withholding tax and Swiss VAT, which should be analysed on a case-by-case basis.

Given the relatively low costs, short time to implement and overall versatility of receivable securitisation transactions making use of existing platforms (compared to, for example, stand-alone public ABS transactions), it is expected that Swiss companies will continue to participate in and make use of such programmes in the future.

Covered Bonds

Introduction

During the low interest rate period of the past several years, the overall prices for real estate and the volume of residential and commercial mortgage loans has grown considerably in Switzerland. While few securitisations of mortgage loans have been implemented in the past in Switzerland, mortgage loans have historically served as collateral for financings of banks under *Pfandbriefe* and under contractual covered bonds.

Owing to the flexibility that contractual covered bonds provide over *Pfandbriefe*, the number of covered bond transactions in Switzerland involving residential and commercial mortgage loans has increased considerably during the past couple of years, with first-time issuers setting up new programmes in 2020, 2022 and 2023, with the last one being set up with a volume of up to CHF20 billion by a global Swiss bank.

Covered bond transactions in Switzerland are typically structured with one bankruptcy remote SPE, which is incorporated by the issuer and acts as guarantor of the payment obligations of the issuer under the covered bonds. The collateral to cover the guarantee is provided by the issuer, which in recent transactions in the Swiss market consisted mainly of residential and commercial mortgage loans, but also auto lease assets. The transaction structure will typically

require a certain level of over-collateralisation to be maintained by the issuer during the lifetime of the covered bond. Different from (true sale) securitisation transactions, the collateral is not sold but rather transferred for security purposes to the guarantor. The covered bonds are usually issued under a programme and publicly placed and listed or privately placed, whereby the proceeds from the issuance of the covered bonds are typically used for the general business purposes of the issuer. The arrangers and managers are normally involved in the structuring, whereby additional transaction parties include servicers for the guarantor, the note trustees, the bondholder's representative, account banks, asset monitors and further third-party service providers.

Unlike contractual covered bond structures that were implemented in Switzerland during the early 2010s, which regularly provided for certain elements of the structure to be governed by laws other than Swiss law (eg, English law), the recently implemented public covered bond programmes all provided for an entirely or predominantly Swiss law governed structure, which has been well perceived by the market. In addition to residential and commercial mortgage loans, there have also been issuances of covered bonds relying on other assets serving as collateral to secure the claims of the covered bondholders, such as auto lease receivables.

Certain elements of the typical covered bond structure in Switzerland

Guarantor

The guarantor is set up as an SPE, which is incorporated in the form of a limited liability stock corporation (*Aktiengesellschaft*) in Switzerland. The shares of the guarantor are held by the issuer and two independent shareholders. The governing corporate documentation provides

for the two independent shareholders to have a joint veto right for most of the resolutions of the general shareholders meeting. The guarantor typically has up to four board members, two of which need to be independent board members (including the chair and the vice-chair). In view of the bankruptcy remoteness of SPEs, the purpose of the guarantor is very narrow and in principle limited to entering into certain transactions that are related to the covered bond programme.

Guarantee and security interests

A guarantee is issued by the guarantor in favour of the covered bondholders on the basis of a guarantee mandate. The guarantee essentially covers all obligations of the issuer towards the covered bondholders under the covered bonds and may be drawn by the trustee subject to the certain guarantee activation events occurring. Any amounts that become due and payable under the guarantee will need to be fully reimbursed by the issuer, which will also be under an obligation to pre-fund these reimbursement obligations.

These obligations of the issuer towards the guarantor to reimburse the guarantor for payments under the guarantee and the pre-funding obligations of the issuer towards the guarantor are secured by the issuer providing security over the cover asset pool in favour of the guarantor.

Cover pool assets

The cover pool assets that secure the obligations of the issuer towards the guarantor typically consists of mortgage loans (residential and/or commercial) or, in the recent past, auto lease receivables made available by the issuer to its clients. In the case of mortgage loans, entitlement to the mortgage notes securing a relevant mortgage loan is also transferred for security purposes by the issuer to the guarantor. In addi-

tion, certain substitute assets (such as cash or other assets satisfying certain criteria) may be part of the cover pool. There are certain tests (such as an asset cover test and an interest cover test) that the cover pool must fulfil and the cover pool will have to provide for over-collateralisation (ie, exceed the aggregate amount of all covered bonds issued at the relevant point). Changes to the cover pool during the lifetime of the covered bonds are possible (eg, by adding or replacing certain assets), subject to specific requirements being fulfilled.

Outlook

With the latest public covered bond programme set up in Switzerland in 2023 by a global Swiss bank and various very successful issuances thereunder in 2023 and 2024, the Swiss covered bond structure has again proven to be a reliable and robust funding tool, which is very well perceived by the market. Given this continued success of covered bonds, other banks or owners of other suitable assets might follow in setting up similar covered bond programmes in the future.

Interest Rate Environment

Due to inflationary pressure in Switzerland, the Swiss National Bank (SNB) increased its policy rate from minus 75 basis in 2022 in several steps to 175 basis points in June 2023. Since inflation in Switzerland has been relatively moderate in 2023 and 2024 the SNB has decreased its policy rate again in March, June and October 2024 each time by 25 basis points to currently 1.00%. With an outlook of further decreasing inflationary pressure in 2025 and inflation thus expected to lie, within the target band set by SNB of 0-2%, it is expected that interest rates may be cut even further in 2025, always also depending on the ongoing assessment of the overall economic and inflationary outlook.

In the past phase of rising interest rates, yields on corporate and government bonds have generally increased and coupons on new issuances have tended to be higher compared to issuances performed during the negative or low interest environment. This held true not only for corporate bonds, but also for securitisation transactions and ABS. As a result of the demand for higher coupons, the financial modelling and structuring of new securitisations and ABS issuances had become more challenging, in particular for securitisations of income generating assets that originated in the low interest rate environment, with such pools of assets providing for relatively low yields compared to the increased funding costs under new issuances. With interest rates now falling again and the expectation of even further interest rate cuts in 2025, this situation is expected to ease.

Therefore, the overall trend to lower interest rates is generally perceived to be favourable for covered bonds, securitisation transactions and ABS, giving Issuers a stable and reliable funding tool to refinance also in the future in the Swiss market.

Legislation

Currently Switzerland has not enacted any specific primary legislation covering securitisation or covered bond transactions. Instead, securitisation and covered bond transactions in Switzerland have been developed and are structured under the general legal and regulatory framework available, such as the Swiss Code of Obligations (eg, relating to the formation of the SPV

and the transfer of receivables and assets), the Swiss Civil Code (eg, relating to security interests), general capital market regulations and regulatory and tax laws. Likewise, Regulation (EU) 2017/2402 (the EU Securitisation Regulation), including its Article 6(1) relating to simple, transparent and standardised securitisations, has been neither adopted by Switzerland nor transposed into Swiss law.

On 10 April 2024, the Swiss Federal Council adopted a report on banking stability following the analysis of the developments in connection with Credit Suisse Group AG. The report outlines 22 measures aimed at improving the supervision and resolvability of Swiss systemically important banks for implementation and seven other measures to be examined in greater depth. One of the measures to be examined in greater depth is the introduction of covered bond specific legislation in Switzerland. Whilst today it is unknown what will result from such examination, whether covered bond legislation will be introduced in Switzerland at all and what form this would take, a formal legislative framework on certain specific aspects of covered bond (and securitisation) transactions in Switzerland would generally be positively perceived to further strengthen the instruments, lower its costs and thus potentially allow smaller market participants to make use of these instruments as a reliable source of funding.

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