The Securitisation Law Review

Fourth Edition

Editor
Michael Urschel

The Law Reviews

THE SECURITISATION LAW REVIEW

FOURTH EDITION

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PREFACE

Securitisation, broadly defined as the conversion of assets into marketable financial securities, has been used as a method of raising capital since as early as the 1970s in the United States. The use of securitisation as a form of borrowing has increased globally since then, and bodies of law have been established in many jurisdictions to allow borrowers to access capital in this manner, while protecting potential investors. Regulatory considerations include tax structuring, bankruptcy considerations and economic-driven regulation focused specifically on securitisation.

Securitisation regulatory frameworks have developed at different rates globally and largely depend on a variety of factors, including the economic state of a given jurisdiction, the broader legal frameworks already in existence (including tax and bankruptcy law), particular asset classes available to securitise and habits of local consumers. Although certain assets, such as mortgage loans, are frequently securitised across many jurisdictions, other asset classes can vary. For example, in the United States and many developed countries, in addition to mortgage loan securitisation, securitisation of automobile loans and consumer debt is extremely common, and significant expansion into other operating assets such as leases and royalties is occurring. In certain other countries, more purpose-driven and asset-class specific monetisation transactions are relevant. Economic events, such as the 2008 recession in the United States, have had a great impact on the regulatory framework, not only in the United States, but also in jurisdictions such as Japan that were affected by the recession, and the effects of the covid-19 pandemic and have led to certain government responses in bolstering the securitisation market. Although 2020 and 2021 were robust years for the securitisation markets, with increased deal volume and substantial innovation in the asset class across the globe, we are currently witnessing the securitisation market's reaction to multiple macroeconomic events, such as global inflation and the recent conflict in Ukraine.

In this fourth edition of *The Securitisation Law Review*, we aim to provide securitisation attorneys, borrowers, lenders and other market participants with insight into a sample of structural frameworks and regulatory issues surrounding the industry in a broad array of jurisdictions. This volume is not intended to be a comprehensive overview of securitisation regulation and structures in every jurisdiction, but rather to provide a frame of reference for, and a comparison of, the various structural features available and the regulatory considerations necessary in securitising assets globally. As the asset securitisation industry continues to develop and expand to new and more esoteric asset classes, such a comparison will undoubtedly be useful to those innovating in global securitisation markets.

I would like to thank the contributors for the chapters that follow. I hope that this volume will produce grounds for continued discussion in the global securitisation industry.

Michael Urschel
King & Spalding LLP
New York
October 2022

Chapter 10

SWITZERLAND

Roger Ammann, Johannes Bürgi and Thomas Meister[1]

I OVERVIEW

i Market overview and size

In Switzerland, securitisation transactions in the past have been based primarily on trade receivables, auto lease receivables and loans, credit card receivables, residential mortgage loans, commercial real estate loans and small and medium-sized enterprise loans.

In the recent past, public ABS transactions in the Swiss market have predominantly involved the securitisation of auto lease receivables and credit card receivables, with a total of seven public issuances in 2020 and 2021 and a cumulative volume of notes issued of around 1.6 billion Swiss francs. In addition, privately placed securitisation transactions are regularly implemented in Switzerland. Owing to the overall growing volume of residential and commercial mortgage loans in Switzerland, the number of residential mortgage-backed securities (RMBS) and commercial mortgage-backed securities (CMBS) transactions in Switzerland is expected to increase in the future, supplementing the management of mortgage portfolios, which had in the past frequently served as collateral for covered bond transactions, rather than being securitised. However, also the number of covered bond transactions in Switzerland involving residential and commercial mortgage loans is expected to continue to grow in the future.

Despite the challenges imposed by the covid-19 pandemic, securitisation activity in Switzerland has remained relatively stable in the past and current year. Furthermore, the portfolios in the consumer lending space that have already been securitised in Switzerland have remained overall stable with low default rates.

ii Basic structure

Securitisations in Switzerland are usually structured as (legal) true sale transactions with one (domestic or foreign) bankruptcy remote special purpose vehicle (SPV) acting as the purchaser of a pool of income-generating assets and as the issuer of the notes. The notes are publicly placed and listed or privately placed, and the proceeds from the issuance of the notes are used by the SPV to acquire the initial pool of assets from the originator at issuance of the notes. The securitisation structures then typically provide for a revolving period during which the asset pool is replenished on a regular basis by having the SPV acquire additional assets from the originator fulfilling predefined eligibility criteria. The replenishment period is followed by an amortisation phase, during which the notes are amortised over time using

1 Roger Ammann is a managing associate and Johannes Bürgi and Thomas Meister are partners at Walder Wyss Ltd.

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.

Domestic SPVs may take the legal form of a limited liability stock corporation or a limited liability company. The SPVs are either held and controlled by shareholders unaffiliated with, and independent from, the originator and the other transaction parties (i.e., orphan SPVs) 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 in this respect from an accounting perspective in view of potential derecognition and deconsolidation.

In addition to the arrangers and managers who are typically involved in structuring the securitisation transaction, transaction parties in Swiss securitisation transactions regularly include asset and corporate servicers for the SPV, security and note trustees, cash managers, account banks and further third-party service providers.

As outlined above, covered bonds have historically been the preferred instrument of issuers in Switzerland to make use of their mortgage loan portfolios, rather than securitising these mortgage loan portfolios in (true sale) transactions. Covered bond transactions in Switzerland are usually structured with one bankruptcy remote special purpose vehicle (SPV) incorporated as a subsidiary of the issuer and acting 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 and more recently also auto lease receivables. Typically a certain level of over-collateralisation will be required to be maintained by the issuer during the lifetime of the covered bond. Unlike in (true sale) securitisation transactions, the collateral is, however, 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 normally used for the general business purposes of the issuer. Similarly to securitisation transactions, 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.

II REGULATION

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

i No risk retention rules

As a consequence, Swiss law does not provide for any risk retention rules for the originator, sponsor or other transaction parties in the context of securitisation or covered bond transactions. Furthermore, Article 6(1) of the Regulation (EU) 2017/2402, relating to simple, transparent and standardised securitisations (EU Securitisation Regulation), has been neither adopted by Switzerland nor transposed into Swiss law. Nonetheless, in the past, a number of Swiss public asset-backed security (ABS) transactions have been structured to provide for the originator to retain, on an ongoing basis, a material net economic interest in the transaction of at least 5 per cent (or any higher amount as provided for in the EU Securitisation Regulation) in order not to negatively affect a potential placement of the notes with EU investors.

ii Regulatory aspects and licensing requirements

There is no specific securitisation legislation or legislation on covered bonds in Switzerland, and therefore there are no licensing requirements per se for originators, SPVs, issuers and servicers. However, every transaction needs to be analysed and structured carefully on a case-by-case basis in view of 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. Depending on the receivables and assets being securities or used as collateral for a covered bond and the regulatory status of the originator, further regulations may be of relevance, including (but not limited to) the Consumer Credit Act (e.g., 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) (e.g., 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).

Regulatory treatment under the Swiss Federal Banking Act and the Swiss Federal Collective Investment Schemes Act

The unanimous view of legal doctrine supported by the practice of Swiss Financial Market Supervisory Authority (FINMA) has been that a special purpose company established for the purpose of (true sale) securitisations would not be characterised as either a bank under the Swiss Federal Act on Banks and Savings Banks (BA), or as a collective investment scheme under the Swiss Federal Collective Investment Schemes Act (CISA). These conclusions are supported by the fact that such securitisation entities:

a refinance through the issuance of publicly or privately placed notes complying with the applicable prospectus regulations; and

b are not conducting investment activities but rather financing activities. Similarly also, SPVs acting as guarantors under covered bond transactions are typically not required to obtain any licence under the BA or CISA.

However, this treatment needs to be carefully analysed and transactions structured accordingly on a case-by-case basis.

Anti-money laundering considerations

In general, financial intermediation undertaken by non-banks is subject to the rules of the Federal Act on Combating Money Laundering and Terrorist Financing (AMLA) and the rules, regulations and administrative guidance from time to time issued by FINMA or the responsible self-regulatory organisation (or both) in this respect.

Under the AMLA, the granting of loans (including consumer credits in the form of credit card loans and auto leasing) and mortgage loans is generally a regulated activity, unless exemptions apply. As a consequence, the originator of such loans will regularly have to comply with the Swiss anti-money laundering rules on an ongoing basis, including know-your-customer rules and the requirement to become a member of a self-regulatory organisation (SRO) in Switzerland recognised by FINMA.

The purchase of receivables, loans or other assets, which had been originated subject to compliance with anti-money laundering regulations on a limited recourse basis by a domestic SPV in the course of a (true sale) securitisation transaction, may require the SPV to itself comply with the AMLA. If compliance with the AMLA has been required for the SPV, such entity will also have to become a member of a self-regulatory organisation (SRO) and comply on an ongoing basis with its duties under the AMLA, which will regularly be delegated to a third-party servicer (such as the originator). However, Swiss public ABS and covered bond transactions have regularly been structured in a way that the SPV is not considered to conduct financial intermediation subject to compliance with the anti-money regulations, but this needs to be analysed and structured on a case-by-case basis.

Consumer Credit Act

The granting of consumer credits (including under credit cards and auto leasing) is governed by the Consumer Credit Act and lenders, providing consumer credits on a professional basis are generally subject to licensing requirements thereunder. Originators who are active in the consumer credit business are thus regularly licensed under the CCA, unless exemptions apply, such as for captive service providers. When a securitisation transaction involves receivables that are subject to the CCA (such as certain auto lease receivables or credit card receivables), care must be given to structure the transaction in a way that issuer will not require a respective licence.

Lex Koller

In Switzerland, equity and debt investments in non-commercial property by non-Swiss investors are in general subject to statutory limitations under Lex Koller. Transactions that are not in accordance with the Lex Koller regulations are considered null and void.

In particular, the financing of the acquisition by a foreign lender is restricted, if the purchaser or owner becomes particularly dependent on the foreign lender due to the following:

a the terms of the mortgage agreement or any side agreement;
b the principal amount of the loan; or
c the financial situation of the purchaser or owner.

A financing is generally regarded as creating a particular dependency from the lender, if it is clearly not in line with Swiss market standards.

In securitisation and covered bond transactions involving residential mortgage loans and non-Swiss transaction parties or investors, particular care must be given to structure the transaction in a way that is compliant with the requirements of Lex Koller.

Regulatory confirmations

It is recommended to seek confirmation from FINMA on certain regulatory aspects of a securitisation or a covered bond transaction and the transaction parties involved prior to implementing the transaction (such as confirmation of non-licensing requirement, confirmation that anti-money laundering regulations do not apply, non-consolidation of SPVs, as relevant and applicable).

Similarly, depending on the assets being securitised or used as collateral in a covered bond transaction, further regulatory confirmations may be sought, such as from the competent cantonal authorities in relation to non-licensing requirements under the Consumer Credit Act (e.g., credit card receivables or retail auto lease receivables being securitised) or the exemption from Lex Koller from competent cantonal or communal authorities.

iii Investors

Under Swiss law, there are, in principle, no restrictions for the type of investors that may invest in (publicly or privately placed) ABS notes or covered bonds. 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. Further restrictions apply with respect to the targeting of non-Swiss investors and foreign capital market regulations with which compliance is required, if the notes will also be placed outside Switzerland.

iv Prospectus rules

Under the Financial Services Act (FinSA) that came into force on 1 December 2020, 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 Institutions Act (FinIA)) must first publish a prospectus. Exemptions are available depending on the type of offer, the type of securities being offered and in connection with the admission to trading. The FinSA and the corresponding ordinance (FinSO) have also introduced specific minimal contents for prospectuses depending on the financial instrument being offered or for which admission to trading is sought (including for notes issued in securitisation transactions and for programmes) as well as a new prospectus pre-approval regime, providing for the mandatory pre-approval of a prospectus by a FINMA licensed prospectus review body. Currently, the only two prospectus review bodies licensed by FINMA are BX Swiss AG (the Berne Stock Exchange) and SIX Exchange Regulation AG. Exemptions are available from the requirement to have the prospectus pre-approved before making the public offering, such as in the case of certain debt instruments, where the prospectus may also be approved post-public offering or admission to trading, or both, provided that certain requirements are met (including that a bank, as defined in the Banking Act, or a securities firm, as defined in the FinIA, issues a confirmation that, at the time of publication of the (preliminary) prospectus, the most important information on the issuer and the securities had been known).

v Tax aspects

Bonds and notes issued by a Swiss issuing SPV (or by the Swiss originator in case of a covered bond) qualify as instruments of collective fund raising for Swiss federal withholding tax purposes. Accordingly, interest payments on such instruments, be they periodic or by original issue discount or premium, are subject to the 35 per cent Swiss federal withholding tax. If bonds or notes are issued by a foreign issuing SPV, care most be taken that such issuance is not attributed to the Swiss originator of the assets serving as security of such issuance. Typically, affirmative advance tax ruling confirmations will be sought as to the Swiss federal withholding tax.

If Swiss mortgages serve as cover stock for Covered Bond, RMBS or CMB transactions, a missing legal link in the security structure needs to be implemented to avoid the interest payments on the bonds and notes issued becoming subject to special cantonal and federal withholding taxes. However, due to ring-fencing of the cover stock and bankruptcy remoteness of the SPV holding the mortgage security, rating agencies have accepted this structure in rated transactions.

There are no specific securitisation rules in Swiss taxation, and therefore transfer pricing should be reviewed carefully, in particular if a Swiss SPV serves as holder of the cover stock or issuer of bonds and notes and if asset servicing remains with the originator. However, the range of income to be earned by a Swiss SPV is quite settled in practice and the competent tax authorities are willing to confirm this in advance of tax ruling confirmations.

Swiss VAT, although the rate is currently only at 7.7 per cent, is a concern in several respects that should be looked at carefully. In general, asset servicing triggers Swiss VAT. If the Swiss SPV holding the cover assets is not registered for VAT purposes (and is not part of the VAT group of the Originator), which is the usual set-up, such VAT charge comes as a leakage and extra cost factor. If VAT-charged receivables are transferred to an SPV, such transfer may trigger an acceleration of the tax point for VAT purposes. Furthermore, 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 SPV with the transferring originator may arise. If planned and arranged carefully, these traps can be avoided and comfort can be sought by affirmative advance tax ruling confirmations from the competent tax authorities. Accordingly, although there is no specific securitisation legislation in the tax field in place, comfort can be sought and is available if structured carefully.

III SECURITY AND GUARANTEES

In securitisation transactions in Switzerland, it is common that the SPV grants a comprehensive security package over its assets, in addition to the (exclusive) indirect access that the investors have to the assets held by the SPV based on the bankruptcy remoteness analysis applicable to the SPV. Such a security package regularly includes the underlying receivables, the claims under the transaction agreements and the bank account claims. By contrast, covered bond transactions are typically structured in a way that the cover pool assets are already provided to the guarantor for security purposes only, so that no additional security will be created over these in favour of a security agent.

i Typical security interests

Security over the underlying receivables and claims under the transaction agreements is typically created by way of an assignment for security purposes. To perfect such an assignment, a written security assignment agreement and a written assignment declaration is required, detailing the receivables and claims to be assigned. Notification of the underlying debtors is not a perfection requirement under Swiss law. However, as long as the underlying debtors have not been notified of the assignment, they may continue to validly discharge their obligations towards the assignor and, in the event of a bankruptcy of the assignor, such payments will fall into the bankruptcy estate of the assignor until the underlying debtors have been notified. Furthermore, it is not required to register the assignment in any sort of (public) register in order for perfection of the security assignment over the receivables and claims that are typically assigned in securitisation transactions.

Bank account claims are treated under Swiss law as claims from the bank account holder against the account bank, and security interests over these bank account claims are created either by way of an assignment for security purpose or a pledge, requiring in each case a written security agreement. Notification of the account bank is not a perfection requirement under Swiss law for an assignment for security purposes, but it is regularly required for the perfection of a pledge due to the priority liens that account banks in Switzerland customarily have over the bank accounts under their general terms and conditions. However, for security assignments it is also standard procedure to notify the account banks of the assignment. Furthermore, the security agreements relating to the bank accounts are typically supplemented by cash control agreements entered into between the account bank, the issuer, the cash manager and the security trustee, to further detail the operational aspects of managing the issuer's bank accounts.

When mortgage claims form part of the assets to be securitised (or of the cover pool for a covered bond), particular care must be given in analysing and structuring potential security interests on a case-by-case basis, given that interest payments, which are secured by Swiss real estate to creditors outside Switzerland, may be subject to cantonal and federal withholding taxes. In addition, the transfer of security interests securing such mortgage claims from the originator to the SPV may require additional perfection steps, such as the transfer of possession of mortgage notes (for paper mortgage notes) or the registration of the acquirer in the competent public land register (for a transfer of full legal title in paperless mortgage certificates).

ii Role of the security trustee

As Swiss law does not provide for the concept of a security trust and in order to mitigate potential insolvency risks in connection with the security agent or trustee, the security structure for securitisation transactions normally provides for a security trustee who holds the security under an English law-governed trust in favour of the noteholders and the other secured parties, as well as if the assets and the security agreements are governed by Swiss law. Depending on whether a Swiss law security interest is considered to be accessory in nature, the security trustee will then hold such security interest either as direct representative in the name and for the account of the noteholders and the other secured parties (in case of Swiss law accessory security interests, such as pledges), or as fiduciary in his or her own name but for the benefit of the noteholders and the other secured parties (in the case of non-accessory Swiss law security interests, such as security assignments).

iii Claw-back provisions

The general claw-back regime provided under Swiss insolvency laws also applies to domestic securitisation structures. As a consequence, in the case of the Swiss SPV being adjudicated bankrupt or being liquidated (except on a voluntary basis), the insolvency official or, under certain conditions, creditors of the Swiss SPV, may challenge the entering into of the relevant agreements and the performance of any obligation thereunder by the Swiss SPV, subject to the conditions of Articles 285 et seqq. of the Swiss Debt Enforcement and Bankruptcy Act (DEBA) being satisfied. Articles 285 et seqq. DEBA provide that a transaction may be subject to challenge:

a if no consideration, or its equivalent, is given ('transaction at an undervalue' as described in Article 286 of the DEBA);

b if the party granting security or discharging a debt was over-indebted ('voidability for over-indebtedness' as described in Article 287 of the DEBA); or

c if a party had the intention to disfavour or favour certain of its creditors or should reasonably have foreseen such a result and this intention was or must have been known to the receiving party ('preference' as described in Article of the 288 DEBA).

With respect to (a) and (c) for transactions with related parties, such as group companies, the burden of proof is reversed and the challenged parties have to prove the adequacy of the challenged transaction.

IV PRIORITY OF PAYMENTS AND WATERFALLS

In Swiss securitisation transactions, the priorities of payments are contractually agreed among the transaction parties, which create a contractual subordination, leading to tranching on the level of the different classes of notes issued by the issuer. Swiss securitisation transactions typically include a pre-enforcement and a post-enforcement waterfall, whereby the transaction documents specify the trigger events, leading to the application of the post-enforcement priority of payments. The administration and management of the cash receipts and the periodic payments in accordance with the applicable waterfall are then typically delegated by the issuer to a third party cash manager.

V ISOLATION OF ASSETS AND BANKRUPTCY REMOTENESS

In Swiss (legal) true sale securitisation and covered bond transactions, isolation of assets is achieved by legally transferring the assets to be securitised (or that serve as collateral for the covered bond) from the originator to a bankruptcy remote SPV. The means of perfecting the transfer depends on the specific nature of the receivables and assets, whereby in certain cases not only the receivables, but also the underlying agreements giving rise to the receivables, are transferred to the SPV, in light of the jurisdiction of the Swiss Federal Supreme Court on the bankruptcy remoteness of the transfer and assignment of future receivables.

i SPV bankruptcy remoteness

Bankruptcy remoteness for Swiss SPVs is generally achieved by a combination of limiting the corporate purpose of the SPV, limited recourse and non-petition provisions that are included in the transaction documents to which the counterparties to the SPV are bound and supporting covenants, representations and warranties of the SPV in the transaction documents. The limitation of the corporate purpose is achieved by implementing certain restrictions on the SPV's corporate purpose in its articles of incorporation, such that any action not related to the scope of the specific transaction under the transaction documents would be ultra vires. Furthermore, all counterparties to the SPV are asked to sign up to the waiver of set-off provisions.

Given the set-up, structuring and operation of the SPV as a special purpose vehicle, it is expected that there will regularly be no relevant creditors other than the transaction parties (who have signed-up to the limited recourse, non-petition and waiver of set-off provisions in the transaction documents) and the tax authorities (from which typically affirmative advance tax ruling confirmations will be sought as to the taxation of the SPVs).

Furthermore, under Swiss corporate and bankruptcy laws, the bankruptcy of a shareholder of the SPV will not lead to the bankruptcy of the SPV, but such shares will be part of the shareholder's bankruptcy estate. Thus, a bankruptcy of a shareholder of the SPV (in its capacity as shareholder) would not legally affect the SPV's contractual obligations under the transaction documents. In addition, a bankruptcy of a shareholder of the SPV would not result in the consolidation of the shareholders' and the SPV's assets and liabilities, as there is no concept of substantive consolidation under Swiss law (subject to exceptional cases, including fraud or abuse of rights).

ii Commingling risk

Commingling of the collections under the securitised receivables is regularly considered to be a risk in Swiss securitisation transactions due to Swiss bankruptcy laws, under which collections that are held in the bank account of the originator or servicer would form part of the originator's or servicer's bankruptcy estate, unless such collections had been previously swept into the SPV. Commingling risk in Swiss securitisation transactions is typically addressed by providing for short time periods for sweeping the collections to the collection account of the SPV and implementing notification triggers that provide for the notification of the debtors to pay directly to the collection account of the SPV well ahead of a potential bankruptcy of the originator. Further risk mitigators for commingling risk may include the appointment of a servicer facilitator or a back-up servicer and the implementation of commingling reserves.

VI OUTLOOK

i Specific legislation

No legislation or regulatory projects specifically related to securitisation or covered bond transactions have been publicly announced in Switzerland for the coming year.

ii Negative interest rates

In January 2015, the Swiss National Bank (SNB) introduced negative interest rates on bank deposits (currently minus 25 basis points on CHF deposits), and the SNB policy rate (which substituted the target range for the three months LIBOR) is currently set at minus 25 basis points. To the extent that negative interest rates remain, structural challenges, in particular for securitisation structures involving higher cash amounts standing to the credit of reserve and other accounts, will also continue to remain.

iii Reform of the federal withholding tax and transfer stamp duty

On 17 December 2021, the two chambers of Parliament resolved on a reform of the Swiss federal withholding tax. Under this reform, interest payments on bonds issued by Swiss resident issuers would not be subject to the Swiss withholding tax. If this proposal comes into force, the interest payments on collective debt financings, including notes or bonds issued by a domestic SPV, would no longer be subject to 35 per cent Swiss federal withholding tax. Similarly, when structuring Swiss securitisation transactions with foreign SPVs acting as issuers, restrictions in this respect will not apply any longer from a Swiss tax law perspective However, only bonds issued by Swiss resident issuers after the revision of the Swiss federal withholding tax will have entered into force (which is currently expected to enter into force on 1 January 2023) would benefit from this exemption. In addition, the reform provides for the abolition of the transfer stamp duty on domestic bonds without replacement, which would further facilitate the issuance of notes and bonds by domestic SPVs and strengthen the position of Switzerland as financial market. The entry into force of this legislation is still subject to a referendum, which is expected to take place in the autumn of 2022, and, therefore, the revision proposed by the Swiss Parliament is subject to public scrutiny before it can be enacted (if it passes the referendum successfully).

iv Securitisation market in general

Overall, the securitisation market in Switzerland is expected to remain stable with respect to traditionally securitised asset classes. In addition, given the overall growing volume of residential and commercial mortgage loans in Switzerland, it is expected that the number of securitisation transactions in Switzerland involving mortgage loans will also increase and supplement the growing number of covered bond transactions in this field.

Appendix 1

ABOUT THE AUTHORS

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Walder Wyss Ltd

Roger Ammann is a managing associate in the Walder Wyss banking and finance team. He regularly advises Swiss and international financial institutions and corporations on all aspects of secured lending and structured financing, including project finance and securitisation transactions (including ABS, RMBS and covered bonds). Roger Ammann obtained his degrees in law and economics in 2008, and in accounting and finance in 2009, both from the University of St Gallen (HSG). He was admitted to the Zurich Bar in 2011 and is a member of both the Zurich Bar Association and the Swiss Bar Association.

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