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To: Securitization Project Steering Committee

Legal Drafting Team

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Consultations' Summary
Draft no 2

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

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

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

1. Structure and scope of the law

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

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

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

ESF: Use Luxembourg law as a role model.

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

2. Secondary regulation

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

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

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

3. Supervision / licensing of SPVs

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

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

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

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

4. Definition of securitization transaction

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

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

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

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

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

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

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

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

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

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

6. **Covered bonds**

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

LDT followed this advice.

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

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

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

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

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

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

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

LDT followed this recommendation.

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

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

LDT followed this recommendation.

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

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

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

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

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

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

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

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

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

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

12. Securitization Register

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

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

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

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

13. Forms of SPV: company vs fund vehicle

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

ESF: We recommend that both structures are regulated in the future Croatian securitization law, as that will provide a broader menu of options for market participants.

LDT followed this recommendation except that ratification of Hague convention / introduction of trusts into the body of Croatian law was considred to be far beyond the scope and aims of this project.

14. Activities / contractual relationships necessary for the SPV to effect the transaction

ILA: The law should make clear that the sole purpose of the SPV is to acquire pools of assets or risks from such assets and to channel the payments from the underlying assets to investors.

ESF: The Law should not contain a list of contractual relationships that a securitization SPV may enter into. Instead, fund SPV cannot perform any other activity than simply grouping the pool of securitized assets and passing the cash flows onto investors. Company's SPV corporate object should be limited to the performance of securitization transactions.

LDT followed this recommendation (there is no exclusive list of contractual relationships that a securitization SPV may enter into) and SPVs is by explicit provision of Art. 10.2 entitled to perform only securitization related activities.

However, in September comments KfW interpreted definitions (in particular, art 3a) as potentially restrictive regarding contracts SPV may enter into (as if the law specifies that SPV may issue securities and contract derivatives only). V. Šonje's opinion is that the securities and derivatives are mentioned for the purposes of defining the "securitisation" as the defined term, while business of the SPVs is defined in Section II of the law implying no restrictions regarding contracting of other instruments (under limitation that the contract is done for the purpose of securitization only and that the respective activity be set out in the prospectus). Further group of arrangements/instruments that SPV is entitled to enter into relate to the management with the cash flow surpluses. LDT may whish to discuss this issue to reassess Mr Šonje's opinion.

15. Re-sell, replenishment, portfolio management, clean-up calls (see also 5 above) and multi-issuance structures

ILA: Re-sell should be allowed under flexible conditions. Re-sell proceeds should certainly not be managed in an investment fund manner that is they should be used for purchases of new securitized assets and/or payments to investors. Definitions of SPV's activities limits are important in this respect. Multi-transaction types of SPVs that use organization of securitized assets within separate asset compartments are one of two options for achieving multi-issuance structures. The other option is to have fund

management company which would be able to register and manage more than one securitization fund.

ESF: Any type of termination of relevant transaction will lead to liquidation if SPV is a single-transaction type. If SPV is a multi-transaction type, organizing assets in several compartments, liquidation of one compartment will not affect the others which may be seen as an advantage.

LDT was fully aware of the advantages of compartmentalization. In finding the final solution LDT weighed these advantages vs costs/risks and alternative ways to achieve the same goal. The final assessment was that compartmentalization of a company SPV is not well established legal and financial concept in Croatia. Its forced implementation by the Securitization Law may lead to large risks regarding legal, accounting and tax treatment. Such risks cannot be foreseen at this stage and hence cannot be regulated ex ante. Court treatment of such a legal concept is also highly uncertain. At the same time, a possibility to run only one securitization fund management company which manages several securitization funds (effectively meaning it can manage unlimited number of transactions at the same time), coupled with a possibility to simply register additional fund by a mere approval of a new prospectus, effectively mimics the concept of multi-issuance. Perhaps it is not as effective solution as compartmentalization in Luxembourg but this solution effectively mimics the multi-issuance solution within specific Croatian legal and financial environment without significant additional cost for market participants.

Termination of relevant transaction will indeed lead to liquidation of an SPV if such SPV is a company as that form is envisaged by the draft law as a single-transaction securitization entity.

This comment is also related to KfW's September comments in relation to art. 10.

16. Hedging arrangements

ILA: Ability of the SPV to enter into hedging arrangements should not be denied, however the LDT should include the general provision dealing with the main purposes for which the entry into such hedging arrangements would be allowed.

ESF: Avoid making a detailed regulation of hedging arrangements that the SPV would be allowed to enter into

There are no detailed constraints of this kind. SPVs are allowed to enter such arrangements and the only additional provisions related to this are contained in art. 54 of the draft law. It requires SPV to attach Investment Policy document to the prospectus. This document should depict the broad principles of managing eventual excess cash flow including ways of entering into hedging arrangements. LDT believes that this provision is in line with usual market transparency standards for the purpose of delivering as much information as possible to investors.

17. Conflict of laws in multi-jurisdictional securitization transactions

ILA: The law should envisage the possibility of the originator to transfer the assets to a non-Croatian SPV that would remain governed by the law of the place of its incorporation. The extent of application of the law should also be clear in transactions where foreign law would govern the assignment and/or the securities would be issued abroad.

ESF: As multi-jurisdictional securitization transactions usually face significant legal barriers it should be clear which special provisions (e.g. bankruptcy remoteness) benefit off shore SPV. It could be helpful that the future Croatian Securitization law expressly recognize the transfer of Croatian assets to an off shore SPV. With regard to the issue of securities it should be subject to the law of the place where the securities are being offered to the public regardless of the place of incorporation of the SPV.

There is nothing in the draft law that would support an interpretation that the assets cannot be transferred to an off shore SPV. Following ESF's advice, the law (art. 2(2)) expressly acknowledges that the law applies in case of the transfer of Croatian assets to off shore SPV (both if securitization transaction is performed in or outside Croatia). Furthermore, Art. 59.2 of the draft law adopted the recommendation that the issue of securities will be subject to the law of the place where securities are being offered and specifically provides that a securitization undertaking having a seat in Croatia is authorized to conduct securitization and issue securities abroad pursuant to the laws or respective foreign state.

However, KfW's September comments point to potential problems with interpretations of this provision. These interpretations may stimulate LDT to think if some more precise regulation may be required in this respect, or lawyers would be able to issue unambiguous opinions at the basis of the existing version of regulation:

- ***(i) KfW's opinion is that foreign arrangers and service providers should be specially regulated as they would be reluctant to become regulated entities in Croatia (art 5 and 7) especially in cases when securities are issued abroad. LDT's interpretation of the wording of the draft law is that an obligation for foreign arrangers and service providers to become regulated entities in Croatia does not exist.***
- ***(ii) KfW's opinion in relation to art 59 is that it should be made clearer to what extent the provisions of the Act apply to securitizations where investors are not in Croatia. Article 59 does not affect foreign investors. Moreover it explicitely provides that foreign issues will be pursuant to foreign law which would then govern the position of investors.***

18. Intermediary SPV

ESF & ILA: Intermediary SPVs may be desired by market participants as such structures are normally used to isolate risks and maximize the performance of SPV

Intermediary SPV are recognized by the draft law in Art. 9.1 as securitization undertakings that unlike those that acquire or dispose of securitised assets and issue securities or contract derivatives, merelely "… perform only some of these transactions…". Intermediary SPVs may be introduced under the draft law under conditions that (i) it is disclosed to investors in the prospectus, (ii) transfer of assets from intermediary to issuing SPV happens within 6 months after approval of the prospectus. Transfer can also happen after 6 months but subject to approval of changed prospectus. 6 month term has been accepted by market participants during the consultation process.

19. Tranches / securities

ILA: The securitization law should not limit the types of debt securities that may be issued in securitization transactions. Issues in tranches should be allowed and covered by one prospectus. Special attention should be attached to the problem whether securitization fund issues units or debt securities.

ESF: Single prospectus should cover all tranches of a single issue.

LDT followed ESF's and ILA's recommendation to expressly regulate single prospectus principles because according to current interpretation of Croatian Securities Market Law each tranche would require separate prospectus. Art. 43 of the draft law is largely devoted to statutory implementation of this objective. Limitations to securities' issues programs are discussed under (5).

There are no limits to the types of debt securities that may be issued. LDT's opinion is that funds may issue debt securities.

20. Prospectus and disclosure

ILA: The law should adequately deal with specific information characteristics of securitization (e.g. disclosure of conflicts of interest). That may be partly dealt with stock exchange rules. However, securities should be subject to high but reasonable disclosure standards in line with internationally accepted ones (e.g. EU Prospectus Directive). As an exception, the issuance of the prospectus should be obligatory both in case of public and private placements.

ESF: Although in practice a private prospectus (offering document) will normally be used we recommend that private placements not be subject to the obligation of publishing a prospectus.

*This is the only provision where LDT seem to have expressly departed from ESF's recommendation (**see also KfW's comment on this topic under art. 40**). However, the departure is more of the formal than substantive nature. LDT's opinion was that there is a lot to gain by introducing this requirement into otherwise non-transparent market (which may help market development even among qualified investors). Also this provision*

may help courts in case of legal suits to avoid objections that any party was not informed and/or that assets were not properly identified and/or evaluated. Finally, this provision would help to use other features of the law that are linked to approval of prospectus (e.g. automatic registration of SPV etc). Hence the benefits of the provision may prove to be much larger compared to the costs that are zero or marginally low because the issuing entity would have to compile the offering circular / documentation anyway in order to present the transaction to qualified investors.

Evaluation of securitized assets is a closely related issue ***(see also KfW's comments on art. 23,26 and 35)****. For the same reasons as indicated above an obligation to obtain independent evaluation of assets (and re-evaluation in case of change in prospectus) was introduced. Given the fact that evaluation may imply significant cost and that this provision is not found in other jurisdictions (evaluation is normally performed by parties to transaction),* ***LDT is invited to perform additional cost / benefit assessment of evaluation provisions throughout the law and eliminate the provision unless really serious costs / risks would arise in a transaction without independent evaluation of securitized assets.***

Provisions on disclosure of the conflict of interest were included in the articles dealing with the prospectus.

21. Rating

ILA: Market participants should be able to freely decide whether or not the issue should be rated depending on the target investors.

ESF: Rating of any securities should not be obligatory by the securitization law.

LDT followed this recommendation.

22. Eligible servicers

ILA: Securitization law should provide a definition of the scope of servicing activities. Authorized servicers should be licenced financial institutions and originators but the law should provide for the possibility that some of the activities are rendered by different service providers including the provision that rendering any such activity does not constitute legal advice. The law should delegate secondary regulation to add further categories of eligible servicers when appropriate. Relevant disclosure documents should provide for sufficient details about the servicer and contractual arrangments between SPV and the servicer.

ESF: Although some jurisdictions employ restrictions to the third party servicers (e.g. Italy and France), third party servicing promotes competition, efficiency and quality of service. Supervision of servicers comparable to that of management companies would be seen by market participants as acceptable.

LDT followed the recommendation to allow third party servicers but it introduced some specific limitations (no financial loss, minimum capital of 140,000 ths EUR and track-record) that are not applied to originators and banks acting as servicers. LDT wanted to exclude suspicious servicers and sees the additional requirements as minimal and not representing significant departure from the best practice. ***KfW's comment in relation to art 17 (actually 18) is that the license requirement for the third party servicers creates an additional burden as compared to other countries.*** *It should be notified again that a special license has not been introduced for the third party servicers. The procedure for approval is the same – everything is approved by mere approval of the prospectus. It is just that the application for the prospectus would have to contain documents proving that the third party servicer meets three aforementioned legal requirements. LDT shall review art. 50 and 51 in order to eliminate any ambiguity regarding this interpretation. In this respect it should be notified that the LDT departed from ILA's advice to delegate licensing of third party servicers to secondary regulation. Otherwise the draft law follows ILA's advice.*

23. Capacity in which the servicer enforces assigned receivables

ILA: Securitization law should mitigate the risk of not being able to differentiate between the servicer's funds and securitization assets or financial flows related to it. Collected proceeds should be deposited to a separate bank account which should not make part of servicer's assets and/or cannot be subject to enforcement by the third party

ESF: As an agent of the SPV servicer is empowered by the law or contract.

*LDT followed these recommendations and in essence the draft law set forth a statutory framework for performance of servicer's role and at the same time expressly enabled SPVs and servicers to regulate any details of their relationship by a contract. LDT decided to provide more detailed regulation of servicer's capacity in the body of the draft law in order to rule out any risk that the bankruptcy, fraud, or any other kind of business casualty interferes with the function of the servicer for the benefit of SPV and, ultimately, investors. As the role of servicer has been deemed to be of a critical importance, the LDT understood that more detailed regulation would not be contrary to recommendations. For that reason, art. 19 regulates separation of assets with the servicer including separate records (****which implies that the originator-servicer may use the same accounts for payments as used before which will economize notification costs – this is an answer to KfW's September comment related to art 19),*** *servicer's reporting obligations, collection of servicer's fees, exclusion of servicer's statutory pledge over securitized assets for its fees and costs (on the basis of the Code of Obligations) etc.*

24. Bondholders' meeting and fiduciary representative (security trustee)

ILA: Bondholders' meeting and joint – fiduciary – representative should be envisaged to prescribe a minimum scope of authority leaving other issues to be defined by the terms and conditions of the ABS.

ESF: The existence of bondholders' representatives should follow the practice of other fixed income markets in Europe having in mind that in Portuguese, Spanish and French regulation where the SPV takes the form of a fund, the management company usually takes the role of investors' representative. Given its civil law tradition it is not necessary to regulate a security trustee concept as envisaged in the common law. Foreign EU firms qualified to represent investors according to their local laws should be permited to perform the same role in Croatia according to its future law.

Common law type of security trustee has not been introduced by this law as recommended by the ESF, however its role of an easy to mobilize operational guardian of investors' rights and interests was reflected in the draft law by introduction of the fiduciary representative . LDT was of an opinion that the fund management company would have a serious conflict of interest, so investor's representation should be regulated through separate entities – investors' assembly and the fiduciary representative. Fiduciary representative has to be appointed from the very beginning of the transaction and this role can be performed by licensed auditors and lawyers. Third parties can perform this function, too, subject to secondary regulation issued by financial regulator which may therefore open door to representation entities and persons who perform these functions in the EU countries. Investors' Assembly may be convened only with regard to protection of investors' the most fundamental economical interest where the fiduciary representative would not be able to act.

In the September comments KfW asked how would investors convene. Art 21 is specific in this respect by requiring that 50% of holders of nominal securities issued convene. LDT did not think it to be necessary to regulate technique of convening investors. There was no intention to treat different tranches differently but that may be an interesting problem to think through and perhaps additionally regulate. LDT should focus on this problem once again.

25. Tax treatment

ESF & ILA: Specific set of tax rules would be preferable for the future law to provide certainty and security to market participants. The alternative of getting tax clearances from the authorities on a case-by-case basis is not appropriate for Croatia given its condition of new entrant to the international securitization markets. As a general rule, securitization is not intended to create tax benefits for any party to the transaction.

Tax Administration opposed any idea to have tax provisions in the securitization law because all tax provisions should be made in tax laws. This in itself does not mean that the alternative is that getting tax clearances on a case-by-case basis would be necessary. That of course depends on the readiness of the Tax Administration to interpret and apply the tax rules to securitization transactions in a manner consistent with their interpretation and application to other transactions having common elements with securitization transactions.

26. Bankruptcy remoteness of the SPV

ILA: SPV fund should not be made subject to bankruptcy law. Bankruptcy of a company SPV is a remote possibility but the law should aim at achieving bankruptcy remoteness even more by the statutory lien, limits to activities, explicit statutory recognition of limited recourse / no petition clauses and other mechanisms such as prescribing conditions for a true sale securitization, encouraging arm's length assignment by clarification of application of bankruptcy law (e.g. preventing bankruptcy administrator from interfering with cash flows from securitized assets)

ESF: Where the SPV is a standard company it will be subject to general bankruptcy laws. It is recommended to follow the Luxembourg law which expressly recognizes the validity and enforceability of limited recourse and non-petition clauses in the bankruptcy of securitization undertaking. Special attention should be paid if Croatian case law recognizes the concepts of bankruptcy group consolidation and piercing of corporate veil. Where the SPV is a fund special regulation would apply. In particular, servicer's separate accounts provisions may be the only way to achieve effective separation in practice, so it should be investigated if the same principle can be extended to originator irrespective if originator acts as servicer or not.

Besides statutory pledge, which effectively secures the securitized assets from the company SPV for the benefit of investors in case of bankruptcy of SPV, bankruptcy remoteness is strengthened by additional provisions in articles 33, 34 and 35. They regulate separation of securitized assets from SPVs assets, settlement from securitization transactions and restrictions on costs that can be collected from securitization assets. In short, SPVs must keep the securitized assets separated from their own assets (applies particularly to SPVs companies) and any collection from securitizaton assets from the party not related to securitization is prevented by the law. Parties related to the transaction can collect costs from the securitization assets if and only if such potential collections are disclosed in the prospectus and attached contractual documentation. Therefore any residual risk remaining with the SPV would have to be disclosed. Lifting of corporate veil is regulated by the Company Law, however very occasional and inconsistent court practice does not suggest what the most effective strategy with regard to such phenomena would be in case of securitization and whether the potential lifting would work for the benefit of investors or to the detriment or arrangers and sponsors. LDT followed ILA's advice in many respects with the only notable exception related to inability to prescribe conditions for true sale securitization as this may interfere with normal market and regulatory practices involving treatment of true sales by rating agencies, audit companies and special regulations (e.g. Capital Requirements Directive / Basle II in relation to banks).

This partly provides an answer to KfW's comments under art. 16. Nevertheless, LDT may wish to review bankruptcy / liquidation provisions to make sure that the proposed provisions are in line with ESF's recommendations, especially regarding group

consolidation, lifting of the corporate veil and extension of accounts' separation to the originator as well regardless if it acts as servicer or not.

27. Data and consumers' protection rules

ILA: The rights of the final debtors of the sold receivables must be preserved and their legal positions/rights must not change after securitization is implemented. The law should allow the option of joint notification of debtors by means of public announcement. Explicit provision on legal consequences of such notification should be incorporated in the law.

ESF: The simplest and the least costly option is to allow under the securitization law the transfer of necessary personal data to third party servicers which would be bound by the same data protection obligations applicable to originators.

LDT followed this recommendation. ***Although the third para of art. 53 makes a specific provision that data transfer among parties to the transaction is free, KfW proposes that it should be made clear that the originator can submit confidential data. LDT may wish to discuss KfW's proposal in which case KfW recommends to add regulation on conditions under which such transfer would be allowed.***

28. Other suggestions to the LDT arising from KfW's September comments:

28.1. What does "professional association" mean (related to art. 15b.). LDT may wish to find more precise formulation or omit ambiguous term.
28.2. What is the role of a Sponsor? Motive for entering the sponsor came from Directive 2006/48/EC. Sponsor is regulated in exactly the same way as in the directive. LDT may wish to reconsider costs and benefits of having this participant regulated in the law. Additional consultations with the drafting team for the Law on Credit Institutions would be required in this respect.
28.3. Why para 2 of art 27 requires transfers of data files to the SPV if that would not be necessary if the originator is also performing the role of the servicer and how would this be done in the case of future claims? LDT may wish to rething the provision along these lines.
28.4. KfW asks for additional opinion if the transfer of ancillary rights subject to later entry to the land registry would be valid if the originator becomes insolvent before the entry in the land registry.
28.5. Art. 30 on joint securitization leavs the impression that everything should happen at the same time and that all originators need to enter into a joint securitization document with the SPV which is not deemed necessary because it can impose limitations towards structural flexibility of the transactions.
28.6. The third paragraph of the art. 32 could not be understood by KfW so LDT may wish to review if that was due to bad translation or there may be some more fundamental problem with this provision.
28.7. Art 37 could not be understood. This is a special provision which eliminates the ambiguity which may arise in case a creditor-originator assigns a pool of

loans with variable interest rate to an SPV whereas the interest rate is not linked to a benchmark rate but rather can be changed at discretion of the originator's board. This provision simply says that such interest rate would change in line with originator's decisions to change the rates on the similar type of loans remaining on its books.

28.8. KfW raised an issue if non-registered real estate can be fully separated in the sense of art. 33?

28.9. KfW raised the issue what does the debt security mean and does it cover the first loss tranches (in the context of art 39)? Debt security is a well defined concept according to Securities Market Law and since no other security can serve the purpose of the first loss piece the debt security would serve this purpose well.

28.10. KfW recognized some potential ambiguity in the formulation "…at the basis of the value of securitized assets" LDT may wish to think about implications of simplifying the expression by omitting "… the value of …" since KfW is worried how to achieve overcollateralization in case this expression remains.

28.11. In relation to provision about prospectus (41b) inclusion of originator data may be very unusual so the LDT may wish to pursue cost-benefit exercise in other to better understand what cost may be implied by omitting this provision.

28.12. In relation to 41(E)2 on the disclosure of all data that may lead to potential conflict of interest KfW is sure that international investment banks will not be able to submit such data because they do not have these data available. LDT may wish to reformulate this provision in order to make it more realistic.

28.13. KfW still did not find explicit allowance of limited recourse provisions where recourse of investors and other counterparties of the SPV can be limited to the available assets in art. 43. LDT may wish to amend the article expressly allowing for limited recourse provisions.

28.14. A period of 60 days for regulator approval is too long by international standards. LDT may wish to discuss a shorter period for approval.

28.15. LDT may wish to specify what are the important characteristics of derivatives to be reported in the offering circular (art 46)

28.16. Art 55: forwarding financial statements to individual investors may be unnecessary and costly exercise so the LDT may wish to find a more practical solution.

Annex

Note

To Velimir Sonje

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Frankfurt, 17.09.2007

Securitisation Act Croatia (Final Draft 25.07.2007, English version)

Below please find the comments we consider most relevant. The comments are based on ample input from Dr. Kurt Dittrich (Linklaters), who gratefully continues to support the KfW Team from time to time (hence still also the Steering Committee). The comments are based on the draft version of the Act dated 25.07.2007 (English version) and circulated to the International Members of the Steering Committee by Velimir Sonje on 27.07.2007.

One general overall comment in advance: The Croatian authorities asked KfW to join the process based on the objective to use KfW's knowledge and experience to build a market friendly best practice based securitisation regulation in Croatia. Besides being proud of having the opportunity to participate in the process at all, from the beginning we had sympathy with the idea presented to us to contribute to the creation of a securitisation framework which would consist of a limited number of articles (some sort of easy to understand primary regulation) and to leave the details for secondary regulation. Now, we need to discuss a draft consisting of about sixty articles which are, in large parts, also very detailed. Obviously, detailed regulation seems to be good practise in Croatian legislation. We are fine with this development, and of course, we would have been less surprised, if we had been aware of such outcome from the beginning.

Anyway, regarding the overall objectives of our cooperation, it is our impression that the current version of the Act mirrors something like a very "protective" instrument which has been created, understandably, in the context of uncertainty. This uncertainty has to do with the fact that, unfortunately, the Croatian parties involved in the project so far never have had an opportunity to practically deal with securitisation issues in the context of concrete transactions. Of course, we recognise the difficulties to draft a law on such a complicated capital market instrument straight from the drawing-board. Given the fact that all of us feel responsible for the final outcome, at least at a technical level, we do not

feel very comfortable with the results achieved so far, especially as we would currently see the danger that the Act would contribute to hamper rather than to support the development of securitisation in Croatia. In this context we are interested to learn to which extent you may have obtained technical and legal feed back on the latest draft Act(for example, from the Croatian banking community)?

Most relevant comments on the Draft Law

Art 3 (a): In addition to securities and derivatives securitisation entities should also be able to enter into other funding instruments in order to keep flexibility. This applies then generally to a number of provisions.

Art 3 (c): At the end of the definition we propose to add "…due to the credit standing of the debtor" in order to make clear that dilution risks are excluded.

Art 4 (a): The instruments to be issued should be "backed by" rather than "based on" the underlying assets. We propose to delete the partial phrase "…based on which the originator has no payment obligation", since the aim of this phrase is unclear.

Art 4: (b) Transfers of assets or credit risk may not be only directly from the originator to the SPV; there may be intermediation structures (such as in synthetic securitisations the like KfW's PROVIDE and PROMISE structures). Such structures should also be covered (also in Article 9).

Art 5: In our view it may be critical to regulate all participants in a securitisation. In particular foreign service providers (which are nowhere regulated) will be very reluctant to become regulated entities in Croatia.

Art. 6: The first paragraph should only relate to "receivables and other assets". While it may be advantageous if a pool of securitised assets is homogeneous this is not an absolute market requirement.

Art 6: The current phrasing of the third paragraph would also exclude synthetic securitisation (which is often used if assets can not be transferred but the credit risk attached to such assets). Further, if Croatian Civil law provides that assets can not be transferred, then this should also apply to securitisations. It should however not be necessary to exclude securitisations generally on this basis.

Art. 7:In our view it may be critical to regulate all participants in a securitisation. In particular foreign arrangers and service providers (which are nowhere regulated) will be very reluctant to become regulated entities in Croatia. Would this also apply even if the securities are not placed in Croatia (only on the basis that we have a Croatian SPV)? In particular such service providers may not accept the far reaching competences (such as access to premises which may not even be in Croatia).

Art. 10: The last paragraph effectively excludes multi issuance structures. We still do not think that this is necessary. To the contrary the use of one SPV for various securitisations may substantially limit the costs (in particular in case of smaller transactions).

Art 15 (b): What does "professional association" mean?

Art 16: Funds must also be used for service providers and other participants. How are the directors and the auditors of the company paid?

Art. 17: The license requirement for third party servicers creates an additional burden as compared to other countries.

Art 19: Is it clear that the originator can continue to use the accounts it used for collection before the securitisation took place (and are the collections on these accounts also protected even if they are commingled with other funds of the originator)? Otherwise, notification of the securitisation is almost mandatory in order to change the accounts. This will be critical for consumer asset transactions.

Art 20: What exactly is the role of a Sponsor?

Art. 21: In practice: How will the investors convene? Notice via the clearing-system? Will different tranches be treated differently?

Art 23, 26: Why do the assets need to be evaluated? In particular, is this at all possible for future assets? We are not aware of any other country where such requirement exists. Evaluation might be very expensive given the liability exposure of the evaluator. The absolute market standard is to leave this to the investors who must make their own economical judgement.

Art: 27: If the originator is also performing the role of the servicer (which is generally the case): why is it necessary to deliver all files to the SPV? In particular, this appears to be critical from a data protection perspective. How would this be done in the case of securitisation of future receivables?

Art 28: If registration is not completed at the time of the securitisation: is the transfer of the assets nevertheless valid in case of the insolvency of the originator?

Art. 30: Is it necessary that all this happens at the same time? Why do all originators need to enter into a joint securitisation document with the SPV? The current phrasing of the Article imposes limitations towards structural flexibility!

Art. 32: The Article does only refer to the receivables purchase agreement but not to the underlying asset. This must also be fulfilled by the bankruptcy administrator. The last paragraph appears to be unclear.

Art 33: Can non-registered assets (in particular real estate) also be separated?

Art. 35: Requirement for regulator's consent may be time consuming. New evaluation again is very costly!

Art 37: The meaning of this Art. is unclear.

Art 39: What does "debt" security mean? Does this cover the first loss risk tranches? What does “on the basis of the value of securitised assets” imply (would it permit to securities whose total notional amount is less than the value of the assets? If not, how would you achieve over-collateralisation? In general, why do you feel such limitation to be necessary?

Art 40: We are still not convinced that a private investor needs a prospectus. In combination with Art. 59 this requirement would even apply to bilateral synthetic securitisations with foreign investors.

Art. 41 (B): Inclusion of originator data is very unusual.

Art 41 (E) 2.: It will be absolutely impossible to get this information e.g. from international investment banks (they will not have this information available).

Art. 43: The Art. does not seem to explicitly allow limited recourse provisions where recourse of investors and other counterparties of the SPV can be limited to the available assets.

Art. 44: A period of 60 days for regulator approval or rejection is way too long. The last paragraph appears to be very vague.

Art. 46: What are important characteristics?

Art 47 et seq: We are not clear with respect to the ultimate purpose of the register?

Art. 53: It should also be made clear that the originator can submit confidential data (and under which conditions).

Art. 55: How can accounts be submitted to all investors (which will regularly not be known)? The cost of this undertaking may be substantial.

Art. 59: The provision should make it clearer to what extent the provisions of the Act apply to foreign securitisations (i.e. securitisation where the investors are not in Croatia)?

KfW Team