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Liechtenstein
SECURITISATION

Contributing firm

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This country-specific Q&A provides an overview of securitisation laws and regulations applicable in Liechtenstein.

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LIECHTENSTEIN
SECURITISATION

1. How active is the securitisation market in your jurisdiction? What types of securitisations are typical in terms of underlying assets and receivables?

The securitisation market in Liechtenstein is not very active and therefore no specific types of assets and receivables may be allocated for securitisation purposes. In particular, to our knowledge, Liechtenstein banks are not currently active in securitisation for regulatory and practicable reasons.

2. What assets can be securitised (and are there assets which are prohibited from being securitised)?

Liechtenstein law does not provide for a specific regulation on types of asset classes that are generally prohibited from a securitisation. In theory, all assets that can be assigned and create a cash flow such as claims, loans or other receivables, may be included in a securitisation. The assignment of claims resulting from confidential legal relationships may be restricted unless the debtor consents to such assignment or waives their rights of protection of data/confidentiality arising from such legal relationship.

3. What legislation governs securitisation in your jurisdiction? Which types of transactions fall within the scope of this legislation?

Currently, there is no specific legislation in Liechtenstein concerning securitisation. The assignment of claims, loans and other types of receivables is regulated in the Liechtenstein General Civil Code.

However, Liechtenstein and the other EEA member states have agreed to adopt Regulation (EU) 2017/2402 laying down a general framework for securitisation, creating a specific framework for Simple, Transparent and Standardized (STS) Securitisation and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 ("EU Securitisation Regulation"). With the adoption of the Regulation into the EEA Agreement, a uniform legal framework for securitisations will be introduced in Liechtenstein for the first time.

The EU Securitisation Regulation in Liechtenstein will enter into force once it has been incorporated into the EEA Agreement. It is currently not predictable when this will happen.

4. Give a brief overview of the typical legal structures used in your jurisdiction for securitisations and key parties involved.

There is no developed securitisation practice in Liechtenstein. However, the public company limited by shares (*Aktiengesellschaft*) would be a type of company that may be ideally used for securitisation purposes.

5. Which body is responsible for regulating securitisation in your jurisdiction?

Currently, securitisation as such is not a regulated activity, although certain participants in a securitisation transaction may have to be licensed under existing financial markets laws such as the Liechtenstein Banking Act (*Bankgesetz*). Generally, the competent authority for licensing and supervising regulated activities in Liechtenstein is the Financial Markets Authority ("FMA", *Finanzmarktaufsicht*).

6. Are there regulatory or other limitations on the nature of entities that may participate in a securitisation (either on the sell side or the buy side)?

Under current law and depending on the business conducted by an originator, service provider or issuer or the type of transaction itself, a participant in a

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securitisation transaction may be subject to certain licensing requirements (e.g. banking license or the like). Furthermore, confidentiality requirements of banks and other financial institutions under Liechtenstein law may prevent the disclosure of personal data of debtors and/or customers to a third party such as a Special Purpose Vehicle (SPV) without the prior consent of the customer.

Once the EU Securitisation Regulation enters into force, additional regulation applies to securitisation transactions (see, in particular, the answer to question 9).

7. Does your jurisdiction have a concept of "simple, transparent and comparable" securitisations?

Currently, Liechtenstein does not have such a concept. Once the EU Securitisation Regulation enters into force in Liechtenstein, however, the concept of Simple, Transparent and Standardised Securitisation ("STS Securitisation") will be introduced in Liechtenstein through Chapter 4 of the EU Securitisation Regulation.

8. Does your jurisdiction distinguish between private and public securitisations?

A distinction is made if a securitisation transaction is connected with a public offering or a private placement. In case of a public offering of securities, a prospectus in accordance with Regulation (EU) 2017/112 ("EU Prospectus Regulation") has to be drawn up and approved by the competent regulator.

9. Are there registration, authorisation or other filing requirements in relation to securitisations in your jurisdiction (either in relation to participants or transactions themselves)?

Since there is no specific securitisation legislation in Liechtenstein, there are no specific licensing requirements for originators, service providers or issuers under current law. Depending on the business conducted by an originator, service provider or issuer or the type of transaction itself, a participant may be subject to certain licensing requirements (e.g. banking license or the like). Furthermore, the transaction may be subject to the prospectus duty according to the Prospectus Ordinance.

Once the EU Securitisation Regulation enters into force in Liechtenstein, originators, sponsors and SPVs are required to submit certain information and documents about the transaction to the competent authority and, if applicable, a securitisation repository. Additionally, originators and sponsors have to jointly notify the European Securities and Markets Authority ("ESMA") where a securitisation meets the requirements of a STS Securitisation.

Furthermore, certain participants in a securitisation transaction may have to be specifically licensed by the competent regulator in accordance with the requirements of the EU Securitisation Regulation, e.g. a third party verifying compliance with STS requirements.

10. What are the disclosure requirements for public securitisations? How do these compare to the disclosure requirements to private securitisations? Are there reporting templates that are required to be used?

Since there is no specific securitisation legislation in Liechtenstein, specific disclosure requirements tailored to securitisation do not exist in Liechtenstein. However, securitisation connected with a public offering may be subject to the prospectus duty in accordance with the EU Prospectus Regulation and therefore certain disclosure requirements apply to an issuer.

Once the EU Securitisation Regulation enters into force, the originator, sponsor and SPV will have to make additional disclosures to holders of a securitisation position, the competent authorities, to a securitisation repository, if applicable, and, upon request, to investors. This disclosure requirement will apply to both public and private securitisations.

The EU Commission has issued technical standards implementing the disclosure requirement pursuant to the EU Securitisation Regulation (Commission Delegated Regulation (EU) 2020/1224), including a template for making the relevant disclosures to competent authorities and securitisation repositories (Commission Implementing Regulation (EU) 2020/1225). These technical standards will apply in Liechtenstein once incorporated into the EEA Agreement.

11. Does your jurisdiction require securitising entities to retain risk? How is this done?

Under current law, there is no specific requirement for securitising entities in Liechtenstein to retain a risk. However, participants in a securitisation like banks or investment firms may be subject to certain general

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capital requirements according to the Banking Act.

Once the EU Securitisation Regulation enters into force, the originator, sponsor or original lender of a securitisation has to retain, on an ongoing basis, a material net economic interest in the securitisation of not less than 5%. That interest has to be calculated at the source and determined by the notional value for off-balance-sheet items.

Where the originator, sponsor or original lender have not agreed between them who will retain the material net economic interest, the originator has to retain the material net economic interest. For the purpose of this requirement, the originator must not be an entity that has been established or operates for the sole purpose of securitising exposures.

12. Do investors have regulatory obligations to conduct due diligence before investing?

Currently, there is no specific regulatory obligation of institutional investors in Liechtenstein to conduct due diligence before and whilst holding a securitisation. However, an institutional investor may generally be subject to a duty of care with a view to investments under civil or company law or, in case of licensed entities, under relevant financial market regulations.

In particular, a legal entity going to invest in a certain financial product has to verify the adequate and proper character of an investment and to check whether such investment would violate the object of the entity, provisions of its articles or internal regulations.

Once the EU Securitisation Regulation enters into force, the institutional investors are specifically required to carry out due diligence prior to holding a securitisation position.

13. What penalties are securitisation participants subject to for breaching regulatory obligations?

Since there is no specific securitisation legislation in Liechtenstein, Liechtenstein law does not currently provide for specific penalties for securitisation participants. However, participants in a securitisation may be fined by the FMA if they violate laws regulating banks and Investment firms or other financial institutions or the prospectus duty.

Once the EU Securitisation Regulation enters into in force, the Liechtenstein regulator will apply the administrative sanctions set out in Art. 32.

14. Are there regulatory or practical restrictions on the nature of securitisation SPVs? Are SPVs within the scope of regulatory requirements of securitisation in your jurisdiction? And if so, which requirements?

Since there is no specific securitisation legislation in Liechtenstein, there are no specific restrictions on the nature of securitisation SPVs. In theory, a public company limited by shares (*Aktiengesellschaft*) would be a type of entity to be used for securitisation purposes. Depending on the type of transaction, a SPV may be subject to the regulatory requirements of the Banking Act or the Prospectus Ordinance.

Once the EU Securitisation Regulation enters into force, a SPV must not be established in a third country that is listed as a high-risk and non-cooperative jurisdiction by the FATF and/or a third country that has not signed an agreement with Liechtenstein regarding the effective exchange of information on tax matters based on the OECD Model Agreement on the Exchange of Information on Tax Matters.

15. How are securitisation SPVs made bankruptcy remote?

There is no developed practice in Liechtenstein to make a SPV bankruptcy remote. In theory, a SPV may limit its corporate object in its articles of association or, in addition to the corporate structure, non-petition, limited recourse and no-setoff provisions may be implemented in the contract with the counterparties.

Moreover, Liechtenstein trust law allows to form orphan owner structures, where the shareholder of an SPV is a trust controlled by a corporate trustee that is not affiliated with the originator. Unlike other jurisdictions, Liechtenstein trust law also allows Purpose Trust Structures.

16. What are the key forms of credit support in your jurisdiction?

There is no established practice in key forms of credit support in securitisation transactions in Liechtenstein. However, credit support might be provided by way of a subordination agreement with certain creditors or by way of over-collateralization. However, over-collateralization (difference between the value of the

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assets purchased and the purchase price paid to the originator) may trigger the risk of a challenge of the transfer by creditors of the originator (creditors´ avoidance within or outside insolvency proceedings).

17. How may the transfer of assets be effected, in particular to achieve a 'true sale'? Must the obligors be notified?

A transfer of receivables requires a Share Purchase Agreement (SPA) between the assignor and the assignee and the effective assignment and transfer of the receivables to the purchaser. Furthermore, the sales price has to comply with the arms-length principle. The consent of the debtor is generally not required. In some cases (see question 2) the debtor has to consent to an assignment and transfer of the receivables to the purchaser.

However, in order to achieve a "true sale", the debtor has to be notified of the assignment. Otherwise, the debtor is allowed (to continue) to validly discharge its obligations under the agreement the receivables are based on.

18. In what circumstances might the transfer of assets be challenged by a court in your jurisdiction?

In practice, acts or omissions detrimental to creditors of the originator are challenged within or outside of insolvency proceedings such as a transfer of assets without an arms-length consideration. The same applies to acts of an entity violating equity protection regulations.

19. Are there data protection or confidentiality measures protecting obligors in a securitisation?

Since there is no specific securitisation legislation in Liechtenstein, the general data protection and confidentiality provisions applicable to financial institutions and certain professions such as lawyers, physicians etc. apply. In practice, banks usually have to obtain a waiver of confidentiality requirements from their customers before being able to assign and transfer loan obligations.

20. Is the conduct of credit rating agencies regulated?

The EU Regulations governing rating agencies are directly applicable in Liechtenstein. The Liechtenstein, CRA implementation law provides for additional provisions regulating the competent authority, their functions and powers, and penal provisions.

21. Are there taxation considerations in your jurisdiction for originators, securitisation SPVs and investors?

Due to its moderate corporate taxation on income and profits and a considerable number of double taxation treaties, Liechtenstein would be an attractive place to establish SPVs compared to other jurisdictions. There are in general no withholding taxes on dividends paid to investors, always subject to double taxation treaties.

However, the main tax issue concerning SPVs established in Liechtenstein is the Swiss stamp duty that is generally applicable in Liechtenstein. In addition and depending on the structuring of the transfer, potential VAT on the transfer of assets/receivables and mitigation of VAT costs incurred as well as VAT on services provided to the SPV by a foreign service provider (reverse VAT for imported services) may have a negative impact on SPVs.

22. To what extent does the legal and regulatory framework for securitisations in your jurisdiction allow for global or cross-border transactions?

There is no specific cross -border securitisation legislation in Liechtenstein. However, due to its Membership in the EEA the EU freedom of movement of capital and the EU freedom to provide services also apply in Liechtenstein.

23. To what extent has the securitisation market in your jurisdiction transitioned from IBORs to near risk-free interest rates?

Due to the fact that the securitisation market is not very active in Liechtenstein, the securitisation market has currently no influence on such transition.

24. How could the legal and regulatory framework for securitisations be improved in your jurisdiction?

The entry into force of EU Securitisation Regulation in Liechtenstein will improve the regulatory framework for

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securitisations. Furthermore, less stringent confidentiality rules would generally facilitate the sale of receivables by banks.

25. To what extent has the impact of COVID-19 changed practice and regulation in relation to securitisations in your jurisdiction?

N/A

26. Are there any filings or formalities to be satisfied in your jurisdiction in order to constitute a true sale of receivables?

Since there is no specific securitisation legislation in Liechtenstein, the general provisions of the civil law concerning contracts apply to a transaction of assets. Depending on the type of assets to be transferred, filings or formalities like the requirement of a written agreement, certification of signatures, notarial act or registration in public registers may apply (e.g. if a debt is secured by a mortgage, the transfer of the mortgage has to be registered in the land register).

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