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Expert Analysis Chapters

1 **U.S. and EU CLOs: Market Trends and Recent Regulatory Developments**
Craig Stein, Phillip Azzollini, Daniel Oshinsky & Martin Sharkey, Schulte Roth & Zabel LLP

8 **Securitization as an Integral Part of a Corporate Capital Structure**
Bjorn Bjerke, Shearman & Sterling LLP

15 **Cross-border Trade Receivables Securitisations – Key Legal Issues to Consider**
Merryn Craske, Neil McKnight & Mark Riccardi, Morgan Lewis

22 **The Rise of Luxembourg Securitisation Partnerships**
Vassiliyan Zanev & Gabriel Canesse, Loyens & Loeff Luxembourg S.à r.l.

27 **U.S. Withholding on Asset-Backed and Structured Securities**
David Nirenberg & Steven Kopp, Chapman and Cutler LLP

Q&A Chapters

36 **Brazil**
Levy & Salomão Advogados: Luiz Roberto de Assis & Fernando de Azevedo Perazzoli

49 **Canada**
McMillan LLP: Don Waters, Yonatan Petel & Michael Burns

62 **Cayman Islands**
Maples Group: James Reeve, Amanda Lazier & Renee Lindo

73 **Cyprus**
Koushos Korfiotis Papacharalambous LLC: Georgia Charalambous & Annita Evangelou

86 **England & Wales**
Sidley Austin LLP: Rupert Wall & Rebecca Chambers

109 **Finland**
Waselius & Wist: Maria Lehtimäki & Ville-Veikko Vänttinen

120 **France**
Orrick, Herrington & Sutcliffe (Europe) LLP: Hervé Touraine & Olivier Bernard

136 **Germany**
Allen & Overy LLP: Dr. Stefan Henkelmann & Martin Scharnke

153 **Greece**
Bernitsas Law: Athanasia Tsene

166 **India**
Wadia Ghandy & Co.: Nihas Basheer

178 **Ireland**
Maples Group: Stephen McLoughlin, Callaghan Kennedy & Lynn Cramer

191 **Japan**
Nishimura & Asahi: Hajime Ueno & Harumi Sasaki

209 **Luxembourg**
GSK Stockmann: Andreas Heinzmann & Katharina Schramm

227 **Netherlands**
Freshfields Bruckhaus Deringer LLP: Mandeep S. Lotay & Dámaris Engelschman

243 **Norway**
Advokatfirmaet Thommessen AS: Kristoffer Hegdahl, Morten Emil Bergan & Markus Kjelløkken

255 **Portugal**
VdA: Paula Gomes Freire, Benedita Aires & Sebastião Nogueira

272 **Scotland**
Brodies LLP: Marion MacInnes, Bruce Stephen, Peter Brading & Craig Henry

286 **Singapore**
Oon & Bazul LLP: Oon Thian Seng, Angeline Woo Mei Yi & Lim Wei-Qi

301 **Spain**
Cuatrecasas: Héctor Bros & Arnau Pastor

321 **Sweden**
Roschier: Johan Häger, Dan Hanqvist & Carl Brodén

333 **USA**
Sidley Austin LLP: T.J. Gordon & Pietro Fontana

Singapore


Oon Thian Seng


Angeline Woo Mei Yi


Lim Wei-Qi

Oon & Bazul LLP

1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a binding contract arise as a result of the behaviour of the parties?

Under Singapore law, it is generally not necessary for a sale of goods or services to be evidenced by a formal receivables contract in order to create an enforceable debt obligation of the obligor to the seller. As illustrated in Section 4 of the Sale of Goods Act 1979, the debt obligation of the obligor to the seller may also be enforced if parties can demonstrate that there was an oral or implied agreement from the conduct of parties, supported by consideration. It would nonetheless still be advisable from an evidentiary viewpoint to have a receivable contract reduced to writing.

It should be noted, however, that certain debt obligations must be evidenced by a written contract in order for the same to be enforceable against the obligor. For example, under Section 6 of the Civil Law Act 1909, a contract for the sale or other disposition of immovable property or any interest in such property must be evidenced in writing. Furthermore, an agreement that is not to be performed within the space of one year from the making thereof (i.e. the sale of goods and services at a future date) must also be made in writing, failing which no action may be brought on the agreement.

The binding receivables contract may be implied by the conduct of the parties notwithstanding the absence of a written agreement. The issuance of an invoice by the seller may be construed as giving rise to a debt obligation especially where it can be established from the surrounding circumstances that parties had, by their conduct, implicitly agreed to the sale of goods and services. A typical example is where parties have a pre-existing or ongoing business relationship where the seller has issued similar invoices as part of the transaction for the sale of goods and services that have been previously accepted by the obligor as giving rise to an enforceable debt obligation.

1.2 Consumer Protections. Do your jurisdiction's laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

There is no express limit on the rate of interest on consumer credit, loans or other kinds of receivables except where the credit, loan or other kinds of receivable has been extended by a "moneylender" as defined under Section 2 of the Moneylenders Act 2008 (the "**Moneylenders Act**"). However, the following guiding principles are generally considered when determining whether the interest rate imposed should be enforced:

(a) the interest rate imposed represents a genuine pre-estimate of loss and not an *in terrorem* penalty;
(b) the terms of the contract involving a person dealing as a consumer are reasonable within the meaning of the Unfair Contract Terms Act 1977;
(c) the interest rate is imposed as part of a *bona fide* contract and not a sham transaction in order to circumvent any statutory or other licensing requirements applicable for moneylending; and
(d) the interest rate imposed does not lead to the transaction being an extortionate credit transaction within the meaning of Section 366 of the Insolvency, Restructuring and Dissolution Act 2018, which may be voided by the court if it was entered into within three years before the commencement of the bankruptcy of the consumer.

The Moneylenders Act does not apply to an "excluded moneylender" (for example, banks, credit societies, pawnbrokers or persons who lend solely to corporations or business/real estate investment trusts or who do not carry on the business of moneylending) or an "exempt moneylender".

Insofar as licensed moneylending is concerned, the prescribed maximum fees/rates chargeable on a non-business loan by a licensed moneylender under the Moneylenders Rules 2009 are as follows:

(a) nominal interest rate of 4% per month; and
(b) late interest at the nominal interest rate of 4% per month.

Late fees, administrative fees, variation fees, unsuccessful deductions, etc. in relation to a loan (other than business loans) are also provided for and subject to certain restrictions as to how much may be charged.

Under Section 37(1) of the Moneylenders Act, a court may (in the course of proceedings brought by a licensed moneylender for the recovery of a loan or enforcement of a contract for a loan or any guarantee or security given for a loan) re-open money-lending transactions where the rate of interest or late interest charged is deemed to be excessive and the transaction is unconscionable and substantially unfair. Section 37(4) of the Moneylenders Act extends the above-mentioned powers of the court to any proceedings for relief brought by a borrower, a surety or other person liable to repay a loan to a licensed moneylender, and Section 37(5) of the Moneylenders Act extends the same powers to the Official Assignee when determining whether the debt or liability claimed by a licensed moneylender against a borrower in his bankruptcy is proved, and its value.

The Rules of Court 2021 further provide that a default rate of interest applies on judgment debts and costs at the interest rate of 5.33% *per annum*.

Insofar as consumer protection is concerned, the Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations 2009 issued under the Consumer Protection (Fair Trading) Act 2003 provides for the right of consumers to cancel certain regulated contracts (which generally refer to direct sales contracts, long-term holiday product contracts, time share or time share-related contracts) within prescribed cancellation periods of five days to up to six months in certain cases. The Consumer Protection (Fair Trading) Act 2003 also provides certain remedies to consumers in relation to unfair practices of suppliers in relation to a consumer transaction, and "lemon law" rights for the repair, replacement, refund or reduction in price of defective products sold to a consumer.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

Under Section 2 of the Government Contracts Act 1966 (the "**Government Contracts Act**"), all contracts including contracts for the sale of goods and services entered into with the Singapore government or a government agency and reduced in writing must be made in the name of the government and may be signed by a Minister or by any public officer duly authorised in writing by the Minister for Finance, either specially in any particular case, or generally for all contracts below a certain value in his Ministry or department.

Claims against the Singapore government or a government agency would be subject to the provisions of the Government Contracts Act. Insofar as civil claims against the Government or government agency are concerned (including claims for receivables under a contract for the sale and purchase of goods and services), such claims will generally be treated the same as any similar claim made against a non-governmental entity.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in your jurisdiction that will determine the governing law of the contract?

Where no choice of law has been specified in a receivables contract, the Singapore courts will firstly consider whether the intention of the parties with regard to the governing law can be inferred from the contract or the surrounding circumstances at the time when the contract was made.

Where a common intention of the parties to adopt a particular governing law cannot be inferred from the contract or the surrounding circumstances, the Singapore courts will have to determine the objective proper law applicable to the contract, being the law with the closest and most real connection with the transaction. In doing so, the Singapore courts will examine the connecting factors (including but not limited to where the parties are situated and where the obligations under the contract are to be performed) and arrive at what a reasonable man ought to have intended the governing law to be, had he thought about the matter at the time when the contract was made.

2.2 Base Case. If the seller and the obligor are both resident in your jurisdiction, and the transactions giving rise to the receivables and the payment of the receivables take place in your jurisdiction, and the seller and the obligor choose the law of your jurisdiction to govern the receivables contract, is there any reason why a court in your jurisdiction would not give effect to their choice of law?

Where the parties have expressly situated the contractual governing law to be Singapore law, the Singapore courts will generally uphold the same unless the choice of law was made in bad faith, or is otherwise illegal or contrary to public policy in Singapore.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in your jurisdiction but the obligor is not, or if the obligor is resident in your jurisdiction but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in your jurisdiction give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

Where the parties have expressly stipulated the contractual governing law to be a foreign law other than Singapore law, the Singapore courts will generally uphold the same notwithstanding that one or more of the parties to the contract are resident in Singapore, unless the choice of foreign law was made in bad faith or is otherwise illegal or contrary to public policy in Singapore.

For example, the parties may be deemed to have acted in bad faith where the choice of foreign law was made deliberately for the purpose of evading the operation of Singapore law, which is intended to be mandatorily applicable in Singapore to the parties and/or the transaction. Section 27(2) of the Unfair Contract Terms Act 1977 provides that the Act is to apply notwithstanding any contract term purporting to apply the law of some country outside Singapore where either: (a) the term appears to the court, or the arbitrator or arbiter, to have been imposed wholly or mainly for the purpose of enabling the party imposing it to evade the operation of the Act; or (b) in the making of the contract, one of the parties dealt as consumer, and he was then habitually resident in Singapore, and the essential steps necessary for the making of the contract were taken there, whether by him or by others on his behalf.

Singapore has enacted the Choice of Court Agreements Act 2016 (which came into effect on 1 October 2016), giving effect to the Hague Convention on Choice of Court Agreements, providing for the recognition and enforcement of choice of court agreements in relation to courts of contracting states.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does your jurisdiction's law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., your jurisdiction's laws or foreign laws)?

There is no requirement under Singapore law for a contract for the sale of receivables to be governed by the same law governing the receivables themselves. Parties are free to choose a contractual governing law that is different from the law governing the receivables, and the Singapore courts will generally uphold the choice of law of the parties unless the choice of law was made in bad faith or is otherwise illegal or contrary to public policy in Singapore. Notwithstanding the choice of contractual governing law, where the receivables are payable in Singapore, Singapore law may still apply mandatorily to certain issues including the assignability, perfection, enforceability and recovery of the receivables in Singapore.

3.2 Example 1: If (a) the seller and the obligor are located in your jurisdiction, (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of your jurisdiction to govern the receivables purchase agreement, and (e) the sale complies with the requirements of your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

In the absence of any qualifying information, the Singapore courts will generally recognise such a sale as being effective in Singapore as against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor) unless the choice of Singapore law to govern the receivables purchase agreement was made in bad faith or is otherwise illegal or contrary to public policy in Singapore.

The relevant laws in Singapore will also apply in the determination of the following issues: (a) the capacity of the parties located in Singapore to enter into or perform their respective obligations under the contract; (b) the validity and perfection of the sale of the receivables by the seller to the purchaser; and (c) the enforceability of the obligations of the parties in Singapore especially in the event of their insolvency.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

Similar to Example 1, the Singapore courts will generally recognise the sale as being effective in Singapore as against the seller and other third parties (such as creditors or insolvency administrators of the seller) located in Singapore unless the choice of Singapore law to govern the receivables purchase agreement was made in bad faith or is otherwise illegal or contrary to public policy in Singapore.

The relevant laws in Singapore will also apply in the determination of the following issues: (a) capacity of the parties located in Singapore to enter into or perform their respective obligations under the contract; (b) the validity and perfection of the sale of the receivables by the seller to the purchaser; and (c) the enforceability of the obligations of the parties in Singapore especially in the event of their insolvency.

The law governing the receivables will apply in determining questions relating to the assignability, perfection, enforceability and recovery of the receivables.

The foreign law requirements of the obligor's country or the purchaser's country may be relevant when determining the capacity of the obligor or purchaser to enter into or perform their respective obligations under the contract, and the enforceability of the obligations of the obligor or purchaser in their respective jurisdictions, especially where there are mandatory laws applicable in the event of their insolvency.

3.4 Example 3: If (a) the seller is located in your jurisdiction but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with your jurisdiction's own sale requirements?

Provided that it has been established that the sale is valid and enforceable under the foreign governing law of the contract and the Singapore courts have jurisdiction, the Singapore courts will generally recognise the sale as being effective as against the seller and other third parties (such as creditors or insolvency administrators of the seller) located in Singapore without the need to comply with the sale requirements under Singapore law, unless the choice of foreign governing law was made in bad faith or is otherwise illegal or contrary to public policy in Singapore.

The foreign law governing the receivables will apply in determining questions relating to the assignability, perfection, enforceability and recovery of the receivables.

The relevant laws in Singapore will, however, apply in the determination of the following issues: (a) capacity of the seller to enter into or perform its obligations under the contract; (b) the validity and perfection of the sale of the receivables by the seller to the purchaser located in a third country; and (c) the enforceability of the obligations of the parties in Singapore especially in the event of their insolvency.

3.5 Example 4: If (a) the obligor is located in your jurisdiction but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in your jurisdiction recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with your jurisdiction's own sale requirements?

Provided that it has been established that the sale is valid and

enforceable under the foreign governing law of the contract and the Singapore courts have jurisdiction, the Singapore courts will generally recognise the sale as being effective as against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) located in Singapore without the need to comply with the sale requirements under Singapore law, unless the choice of foreign governing law was made in bad faith or is otherwise illegal or contrary to public policy in Singapore.

The foreign law governing the receivables will apply in determining questions relating to the assignability, perfection, enforceability and recovery of the receivables.

The relevant laws in Singapore will, however, apply in the determination of the following issues: (a) capacity of the obligor to enter into or perform its obligations under the contract; and (b) the enforceability of the obligations of the obligor in Singapore especially in the event of their insolvency.

3.6 Example 5: If (a) the seller is located in your jurisdiction (irrespective of the obligor's location), (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in your jurisdiction and any third party creditor or insolvency administrator of any such obligor)?

Provided that it has been established that the sale is valid and enforceable under the foreign governing law of the contract and the Singapore courts have jurisdiction, the Singapore courts will generally recognise the sale as being effective as against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor in Singapore and any third party creditor or insolvency administrator of any such obligor) in Singapore without the need to comply with the sale requirements under Singapore law, unless the choice of foreign governing law was made in bad faith or is otherwise illegal or contrary to public policy in Singapore.

However, as the governing law of the receivables, Singapore law will apply in determining questions relating to the assignability, perfection, enforceability and recovery of the receivables.

The relevant laws in Singapore will also apply in the determination of the following issues: (a) the capacity of the parties located in Singapore to enter into or perform their respective obligations under the contract; (b) the validity and perfection of the sale of the receivables by the seller to the purchaser located in a third country; and (c) the enforceability of the obligations of all parties located in Singapore especially in the event of their insolvency.

4 Asset Sales

4.1 Sale Methods Generally. In your jurisdiction what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

Under Singapore law, there is no specific terminology that must be used in order for a seller to sell receivables to a purchaser. However, a sale of receivables (whether current or future) usually takes the form of an absolute assignment from the seller to the purchaser in exchange for which the purchaser provides a consideration (which may be pecuniary or otherwise) to the seller. It is also not uncommon for a seller to assign to the purchaser receivables together with the contract rights conferred onto the seller under the underlying sale agreement to enforce the terms of the same against the obligor.

A legal assignment of receivables from a seller to a purchaser under Singapore law requires that:

(a) the underlying contract between the seller and the obligor under which the receivables are payable permits assignment of such receivables;
(b) the assignment must be absolute;
(c) the assignment must be in writing and signed by the assignor; and
(d) notice in writing of the assignment must be given to the obligor.

If any of the above requirements are not met, the assignment of receivables may still be recognised under Singapore law as an equitable assignment.

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

The formalities required under Singapore law for perfecting a sale of receivables are as set out in question 4.1 above. A party who has received a legal assignment of the receivables will have priority over any subsequent good faith purchaser for value of the same receivables from the seller without the need to take any further steps.

A subsequent legal assignment of receivables in good faith, for value and without notice of a preceding equitable assignment over the same receivables will take priority over such a preceding equitable assignment, unless the subsequent purchaser was not *bona fide* or was aware at the time of the assignment to that subsequent purchaser of the earlier equitable interest in those receivables.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

Promissory notes can be sold and transferred by delivery (if it is a bearer instrument) or by delivery and endorsement (if it is a negotiable instrument). A promissory note is categorised as a "bill of exchange" under Section 3(1) of the Bills of Exchange Act 1949 (the "**Bills of Exchange Act**") and is subject to the provisions thereunder. Under Section 21 of the Bills of Exchange Act, the holder of a bill is presumed to have received valid delivery of the same from the drawer, acceptor or indorser until the contrary is proven.

Loans including mortgage and consumer loans can be sold and transferred by way of assignment. The requirements for the legal assignment of loans are similar to that for a legal assignment of receivables as set out under question 4.1 above. Where the mortgage loan is secured by a mortgage over an asset: (i) which requires that; or (ii) in respect of which, legal title is derived from registration with any authority or registry (for example, for immovable property and ships, etc.), and which is also to be transferred together with the loan, registration of the transfer of the mortgage will need to be lodged with the appropriate authority or registry (e.g. Singapore Land Authority,

Singapore Ship Registry, etc.). In addition, where the mortgagor is a company, particulars of the mortgage will need to be lodged with the Accounting and Corporate Regulatory Authority of Singapore.

Marketable debt securities can be sold and transferred by giving instructions for this transfer from the account of the seller to the account of the purchaser in the clearing system.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

A sale of receivables by the seller must be notified in writing to the obligor in order for the same to be effective as against the obligor. The sale of receivables is effective as against the creditors of the seller notwithstanding the absence of a written notification to the obligor.

While it is customary for the seller as the contracting party to give notice to the obligor, a purchaser may also notify the obligor if the seller fails to do so. The consent or acknowledgment of the obligor to the sale of the receivables is expressly prohibited in the contract between the seller and the obligor under which the receivables arise.

The giving of the written notice to the obligor of the sale of the receivables entitles the purchaser to certain benefits including:

(a) ensuring that payment of the receivables is made to the purchaser instead of the seller, and that failure of the obligor to do so, subsequent to the notification, does not constitute satisfactory discharge of the obligations of the obligor under the underlying contract;

(b) "cutting off" the set-off rights of the obligor (other than those which have already accrued prior to the notice of assignment being given);

(c) the purchaser will have the right to seek recourse directly against the obligor and its creditors for payment of the receivables without joining the seller; and

(d) the purchaser will be able to claim priority to the receivables as against any subsequent good faith purchaser of the same receivables, for value without notice of the prior sale.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings have commenced against the obligor or the seller? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

There is no prescribed form for the notice of sale and no specific method required for the delivery of the same. The only requirement is for the notice to be made in writing.

There is no limit beyond which the notice will be ineffective. The notice of sale can be delivered at any time subsequent to the sale including after insolvency proceedings have commenced against the obligor or the seller. However, the sale will be inchoate until the notice is given and the purchaser will lose his priority as against subsequent good faith purchasers of the same receivables for value without notice of the prior sale.

A notice of the sale of receivables can apply for specific receivables as well as any and all future receivables.

There may be limitations in the enforcement of the purchaser's rights to the receivables in a situation where the notice is given after insolvency proceedings have commenced against the obligor or the seller, since the assets of the seller and obligor will be subject to the insolvency regime.

4.6 Restrictions on Assignment – General Interpretation. Will a restriction in a receivables contract to the effect that "None of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says "This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights)?

A restriction in either of the first two examples is likely to be construed as prohibiting a transfer of receivables by the seller to the purchaser unless consent of the obligor has been obtained.

However, a restriction in a receivables contract to the effect that "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" is not likely to be construed as prohibiting the sale and transfer of receivables as the same would be treated as a right conferred on the seller and not an obligation. It is not uncommon for only the rights and benefits of the seller to be transferred to the purchaser but with the obligations to remain with the seller under the receivables contract.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or "seller's rights" under the receivables contract, are such restrictions generally enforceable in your jurisdiction? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If your jurisdiction recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

If the receivables contract explicitly prohibits an assignment of receivables or the "seller's rights" under the receivables contract, whether in the wording set out in question 4.6 above or otherwise, the Singapore courts will generally enforce such restriction. As far as we are aware, there are no exceptions to this rule.

Where such restrictions are present, but the seller nevertheless sells receivables to the purchaser, the seller (as party to the receivables contract) will be liable to the obligor for breach of contract. If the purchaser is also aware of the restriction but nonetheless procures or induces the seller to breach the receivables contract by the sale of the receivables, the purchaser may be made liable for inducing the breach of contract.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

There is no requirement for any specific information to be provided so long as the sale document provides sufficient details to enable the receivables to be clearly identified at the time of the sale or as and when any future receivables sold under the receivables contract come into existence. This is a question of fact.

The sale of "all receivables", whether or not qualified by the exclusion of certain specifically identified receivables or not, may not always be sufficient identification of the receivables intended to be sold by the seller. In the absence of clarity on what constitutes "receivables" for the purposes of the sale, the use of the terms such as "all receivables" without an accompanying definition may give rise to disputes between the parties as to the scope of receivables to which the purchaser is entitled under the sale.

4.9 Recharacterisation Risk. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or is there a risk that the transaction could be characterised by a court as a loan with (or without) security? If recharacterisation risk exists, what characteristics of the transaction might prevent the transfer from being treated as an outright sale? Among other things, to what extent may the seller retain any of the following without jeopardising treatment as an outright sale: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; (d) a right of repurchase/redemption; (e) a right to the residual profits within the purchaser; or (f) any other term?

The Singapore courts would generally treat a transaction as being a genuine and outright sale where the relevant documents explicitly state the parties' intention as such. That being said, a court is entitled to and would examine the facts, circumstances and effect of the transaction notwithstanding its express provisions.

There is a risk of recharacterisation of the sale as a loan with (or without) security, where it appears to the Singapore courts from the express wording of the sale contract or the surrounding circumstances that the parties had an inappropriate or dishonest intention of entering into a sham transaction, whether for the purpose of circumventing any applicable laws or to disguise what is substantially a loan with (or without) security or otherwise.

A purported sale where the credit risks and interest rate risks remain with the seller may be construed as being inconsistent with the sale of the receivables to the purchaser. Granting the seller the right to repurchase or redeem the receivables are also indicative of the sale being intended more as a security rather than an outright sale. The retention by the seller of control over collection of the receivables or the right to residual profits within the purchaser may or may not, depending on the circumstances, contribute towards the sale being treated as a loan with (or without) security. The Singapore courts typically consider these factors along with any other facts that, in their opinion, may be relevant in inferring the true intention of the parties.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller's insolvency?

A seller can agree in an enforceable manner to a continuous sale of receivables so long as the formalities required to perfect the sale are complied with. In order to ensure the purchaser's priority to the receivables, notice of the sale should be given to each and every obligor from whom the receivables sold are payable as and when the obligation arises.

Such an agreement can survive and continue to transfer receivables to the purchaser following the seller's insolvency, provided the obligor continues to be obliged to pay such receivables under its contract with the seller.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to *versus* after the seller's insolvency?

A seller can commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement, so long as the formalities required to perfect the sale have been complied with.

As with question 4.10 above, notice of the sale must be given to the obligor at the future date when the seller enters into the contract with the obligor under which the obligor's obligation to pay the receivable arises to ensure the purchaser's priority to the same.

Receivables that arise after the seller's insolvency is only legally assigned to the purchaser if notice has been given to the obligor of the sale and the receivables remain payable under the contract between the seller and the obligor notwithstanding the seller's insolvency. Until notice is given, the purchaser only has an equitable assignment of the receivables and is vulnerable to claims from intervening good faith purchasers or assignees of the same receivables for value without notice of the prior sale.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

The formalities required in order to transfer related security concurrently with the sale of receivables depends on the nature of the security. Most types of security can be transferred by way of assignment or novation of the rights of the seller to the purchaser. Additional requirements may be in place for the assignment of certain types of security. For example, if the security is a mortgage over a Singapore registered land or a ship, the transfer of the same requires registration with the Singapore Land Authority (in the case of land) and the Singapore Ship Registry (in the case of a ship). If the obligor is a company registered in Singapore, particulars of the security and the secured party will need to be lodged with the Accounting and Corporate Regulatory Authority of Singapore if they fall within the categories set out under Section 131(3) of the Companies Act 1967.

If there is any security that cannot be transferred in an enforceable manner, it is customary for the purchaser to require the seller to either hold the security on trust for the purchaser, or to concurrently discharge the security in favour of the seller and create an identical security in favour of the purchaser. The former retains the priority of the purchaser to the security as from the time it was granted to the seller. The latter, while potentially leading the purchaser to lose priority in respect of the security, will give the purchaser a direct recourse against the obligor without joining the seller.

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor's set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor's set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set off against amounts it owes to the seller, the obligor's set-off rights terminate at the time the obligor receives notice of the sale and assignment of the receivables without prejudice to any pre-existing rights of set-off accrued prior to that time.

Notwithstanding the above, the seller may remain liable to the obligor for the damages resulting from the termination of the obligor's set-off rights after notice of the sale and assignment has been given.

4.14 Profit Extraction. What methods are typically used in your jurisdiction to extract residual profits from the purchaser?

In Singapore, where the sale is outright, the benefit of any residual profits resulting from the sale of the receivables to the purchaser is retained by the purchaser. Where the seller wishes to extract the residual profits from the purchaser, an agreement between the seller and the purchaser as to how and in what circumstances residual profit is paid back to the seller will need to be in place. However, such an arrangement may lead to the Singapore courts questioning whether in substance the transaction is a genuine sale or recharacterising the sale as a loan.

5 Security Issues

5.1 Back-up Security. Is it customary in your jurisdiction to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected (see question 4.9 above)?

While it is not uncommon for the sale of the receivables to be accompanied by the sale of all ancillary security granted by the obligor to secure its obligations under the receivables contract, it is not customary for "back-up" security interests over the seller's ownership interest in the receivables to be taken in a transaction for the sale of receivables. Consistent with a genuine sale, both the benefit and risk of non-payment of the receivables by the obligor is passed on to the purchaser. To secure such risks by taking "back-up" security interests over the seller's ownership interest in the receivables may be construed as being more akin to a loan with security.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your jurisdiction, and for such security interest to be perfected?

We refer to our response under question 5.1 in respect of any security interest granted by the seller over the receivables.

In respect of any other security to be transferred to the purchaser together with the sale, please refer to our response under question 4.12.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in your jurisdiction to grant and perfect a security interest in purchased receivables governed by the laws of your jurisdiction and the related security?

If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, the purchaser will need to take such appropriate steps to create and perfect the security created over each asset secured depending on the nature of the asset.

Insofar as receivables are concerned, any assignment of the receivables by way of security (as opposed to a sale) will need to be perfected by giving notice of the assignment to the obligor from whom the receivables are or will be due.

Other securities such as a mortgage over registered land must be registered with the Singapore Land Authority. If the obligor is a company registered in Singapore, particulars of the security and the secured party will need to be lodged with the Accounting and Corporate Regulatory Authority of Singapore if they fall within the categories set out under Section 131(3) of the Companies Act 1967, failing which the security will not be enforceable against the liquidators or other creditors of the obligor.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of your jurisdiction, and that security interest is valid and perfected under the laws of the purchaser's jurisdiction, will the security be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

Where the receivables are governed by Singapore law, the questions as to the substantive validity of the security interest or the enforceability of the security in Singapore will be determined under Singapore law.

However, questions of the purchaser's capacity to grant such security over the receivables or the procedural and formal requirements for the perfection of the security will be determined under the law of the purchaser's jurisdiction as the grantor of the security.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

Security interest in insurance policies, mortgage loans and consumer loans are usually granted by way of an assignment.

As with all other assignments, notification to the counterparty identifying the secured party and its interests is necessary in order to ensure that the secured party may seek recourse directly against the counterparty. We refer to our response in question 5.3 in relation to the requirements for creation of a mortgage over registered land connected to a mortgage loan.

It is customary for an assignment of an insurance policy to require the insurer to provide an endorsement to the policy recognising the secured party's interest and to name the secured party as a loss payee of the insurance policy. Depending on the nature of the insurance, a secured party may also require certain undertakings to be provided in respect of non-cancellation/information to be provided by insurers, underwriters or brokers.

A security interest in promissory notes is usually created by way of a pledge and requires the delivery of the promissory notes to the secured party so that the right to receive payment under the promissory note from its issuer is preserved.

A security interest over marketable debt securities held with the Central Depository (Pte) Limited is created by way of a statutory law security by filing the requisite security forms. Common law security may also be created over marketable debt securities if the grantor of the security and the lender each open a sub-account with the same depository agent. The security grantor can then charge in favour of and assign to the lender all its rights, title and interest in its sub-account and all the marketable debt securities held in that sub-account. Notice of the assignment should also be given to the depository agent in order to perfect the assignment.

If the grantor of the security is a company registered in Singapore, particulars of the security and the secured party will need to be lodged with the Accounting and Corporate Regulatory Authority of Singapore if they fall within the categories set out under Section 131(3) of the Companies Act 1967 failing which the security will not be enforceable against the liquidators or other creditors of the grantor.

5.6 Trusts. Does your jurisdiction recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets (so that they are not part of the seller's insolvency estate) until turned over to the purchaser?

Trusts are recognised under Singapore law.

5.7 Bank Accounts. Does your jurisdiction recognise escrow accounts? Can security be taken over a bank account located in your jurisdiction? If so, what is the typical method? Would courts in your jurisdiction recognise a foreign law grant of security taken over a bank account located in your jurisdiction?

Singapore law recognises escrow accounts.

Security can be taken over a bank account located in Singapore by way of a charge over the account. This charge may require the consent of the bank with which the bank account is held in order for the same to have priority over the general bankers' lien that the bank may have over the account and the funds standing therein. In addition, a charge over a bank account and the funds standing therein would need to be registered under Section 131(3) of the Companies Act 1967 failing which the charge will not be enforceable against the liquidator or other creditors of the account holder.

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

This depends on the provisions of the security instrument. Most such instruments typically provide that (upon enforcement) the secured party will be able to control all cash flowing into the bank account until the secured party is paid in full.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

This depends on the provisions of the security instrument. If permitted under the terms of the charge, the account holder can be given the right to deal with the funds in the bank account prior to the enforcement of the charge without affecting the security. The same will be treated as a floating charge until such time when the security is enforced, and the charge is crystallised.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will your jurisdiction's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? If so, what generally is the length of that stay of action? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

If a sale of receivables is not perfected before the seller becomes subject to an insolvency proceeding, the purchaser would be able to continue to collect, transfer or otherwise exercise ownership rights over the purchased receivables as against the seller or its liquidator or creditors.

A sale that is not a genuine sale and that has been recharacterised as a loan with security by way of the sale of receivables will not be enforceable against the liquidator and other creditors of the seller, unless lodgement of the security is made in accordance with Section 131 of the Companies Act 1967.

In the case of a judicial management application made in respect of a Singapore company, upon the making of such an application, no steps may be taken to enforce any charge or security or to repossess any goods or to commence any proceedings, execution or other legal process against the company or its property, except with leave of court. When a judicial management order is made, any receiver shall vacate office and: (i) no execution or other legal process shall be commenced against them; and (ii) no steps taken to enforce security over or to repossess the company or its property, except with the consent of the judicial manager or with leave of court.

In the case of a winding-up application having been commenced, the company or any creditor or contributory may apply to court at any time before a winding-up order is made for a stay of proceedings pending against the company. Any disposition of the property of the company (including things in action) made after the commencement of the winding-up shall (unless

the court otherwise orders) be void, and any attachment, sequestration, distress or execution shall be void. Upon the winding-up application being granted, no proceedings may be commenced or continued against the company without leave of court.

6.2 Insolvency Official's Powers. If there is no stay of action, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of its ownership rights over the receivables (by means of injunction, stay order or other action)?

The insolvency official may be able to apply to the Singapore court for an injunction prohibiting the purchaser to exercise its ownership rights over the receivables, where it can be shown that the sale was not a genuine sale and is liable to be set aside as a transaction that is at an undervalue or that gives rise to an unfair preference in accordance with Sections 361 and 362 of the Insolvency, Restructuring and Dissolution Act 2018 (as applied to a company pursuant to Section 224 or 225 of the Insolvency, Restructuring and Dissolution Act 2018).

The sale may be considered to be a transaction at an undervalue where:

(a) the seller makes a gift to that purchaser or otherwise enters into a transaction with the purchaser on terms that provide for the seller to receive no consideration;
(b) the seller enters into a transaction with the purchaser in consideration of marriage; or
(c) the seller enters into a transaction with the purchaser for a consideration received, in money or money's worth, which is significantly less than the value, in money or money's worth, of the consideration provided by the purchaser, having regard to the circumstances prevailing at the time of the transaction.

On the other hand, the sale may be deemed to give rise to an undue preference where:

(a) the purchaser is one of the seller's creditors or a surety or guarantor for any of the seller's debts or other liabilities;
(b) the seller does anything or suffers anything to be done that (in either case) has the effect of putting the purchaser in a position which, in the event of the seller's insolvency, will be better than the position he would have been in if that thing had not been done; and
(c) the seller has given an unfair preference with a desire to produce in relation to the purchaser the effect referred to above. Such intention is presumed, unless the contrary is shown, where the purchaser is an associate of the seller.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the seller's insolvency proceedings? What are the lengths of the "suspect" or "preference" periods in your jurisdiction for (a) transactions between unrelated parties, and (b) transactions between related parties? If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period? If a parent company of the seller guarantee's the performance by the seller of its obligations under contracts with the purchaser, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period?

With reference to our response under question 6.2 above, the clawback period is as set out in Section 226 of the Insolvency, Restructuring and Dissolution Act 2018. In summary, the lengths of the suspect periods are as follows:

(a) three years from the date of commencement of the insolvency proceedings in respect of any transactions at an undervalue;
(b) one year from the date of commencement of the insolvency proceedings in respect of any undue preference granted to a creditor who is not an associate to the insolvent party; and
(c) two years from the date of commencement of the insolvency proceedings in respect of any undue preference granted to a creditor who is an associate to the insolvent party.

The definition of what constitutes an "associate" of the insolvent party can be found under Section 217 (for bankrupt individuals) and 364 (for companies) of the Insolvency, Restructuring and Dissolution Act 2018, which, for companies, generally includes its directors and controllers, whether they are legal shareholders or otherwise.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding? If the purchaser is owned by the seller or by an affiliate of the seller, does that affect the consolidation analysis?

Under Singapore law, it is not common for assets and liabilities of separate legal entities to be consolidated even if there exists a parent-subsidiary relationship between the entities. As such, if the seller, as the shareholder of the purchaser, becomes subject to insolvency proceedings, the purchaser subsidiary can continue to exist without being affected.

The Singapore courts will only be willing to pierce the corporate veil and look to the assets of other affiliated companies of an insolvent company in limited circumstances such as fraud.

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in your jurisdiction, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) on sales of receivables that only come into existence after the commencement of such proceedings?

With reference to our response under questions 4.10 and 4.11, the purchaser will still be entitled to receivables that would otherwise occur after the commencement of insolvency proceedings against the seller or that only come into existence after the commencement of such proceedings provided the obligor remains bound under the receivables contract to pay those receivables.

6.6 Effect of Limited Recourse Provisions. If a debtor's contract contains a limited recourse provision (see question 7.4 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

Where the debtor's contract contains a limited recourse provision, it is still possible for the debtor to be declared insolvent on the grounds that it cannot pay its debts as they become due given that this is essentially a question of fact.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in your jurisdiction establishing a legal framework for securitisation transactions? If so, what are the basics? Is there a regulatory authority responsible for regulating securitisation transactions in your jurisdiction? Does your jurisdiction define what type of transaction constitutes a securitisation?

There is no statute in Singapore dealing with securitisation law. However, the Monetary Authority of Singapore (MAS), as the financial regulator, occasionally issues notices, circulars and guidelines that provide the framework for securitisation transactions.

MAS Notice No. 628 deals with securitisation and sets out under Sections 3, 4 and the Annexes the mandatory requirements applicable to banks and under Section 5 the non-mandatory guidelines on the responsibilities of banks in respect of a securitisation. MAS Notice No. 832 sets out similar requirements applicable to finance companies.

Income derived by an approved securitisation company resident in Singapore from asset securitisation transactions are exempt from income tax provided they meet the conditions under Section 13P of the Income Tax Act 1947. The regulations dealing with this exemption are set out under the Income Tax (Exemption of Income of Approved Securitisation Company) Regulations 2008.

MAS Notice No. 637 defines securitisation to mean any transaction or scheme involving the tranching of credit risk associated with an exposure or a pool of exposures, and which has the following characteristics:

(a) payments in the transaction or scheme depend on the performance of the exposure or pool of exposures;
(b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme; and
(c) junior tranches can absorb losses without interrupting contractual payments to more senior tranches.

7.2 Securitisation Entities. Does your jurisdiction have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

MAS Notice No. 628 referred to in question 7.1 deals with the establishment by banks of special purpose entities (SPE) to undertake asset securitisation transactions and the requirements imposed on the same.

Section 3.1 of the Notice requires that any bank acting as the programme sponsor, manager or an originator of a securitisation transaction comply with the separation requirements set out in Annex A and the disclosure requirements set out in Annex B.

Annex A provides that any bank acting as the programme sponsor, manager or an originator of a securitisation transaction shall not, in respect of the SPE used in securitisation:

(a) in the case where the SPE is a corporation, own any share capital in the SPE, including ordinary or preference shares, or in the case where the SPE is a trust, own any share capital in the trustee or be a beneficiary of the SPE;
(b) name the SPE in a manner as to imply any connection with the bank;
(c) have any director, officer or employee on the board of the SPE unless:
    i. the board is made up of at least three members the majority of whom are independent directors; and
    ii. the officer representing the bank does not have veto powers;
(d) directly or indirectly control the SPE; or
(e) provide implicit support or bear any of the recurring expenses of the securitisation.

Notwithstanding the above, a bank may hold preference shares issued pursuant to a securitisation provided:

(a) the bank does not directly or indirectly control the SPE or the underlying exposures; and
(b) MAS is satisfied that the preference shares have debt-like characteristics.

All transactions between the bank and the SPE are to be conducted at arm's length and on market terms and conditions.

7.3 Location and form of Securitisation Entities. Is it typical to establish the special purpose entity in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the special purpose entity in your jurisdiction? If offshore, where are special purpose entities typically located for securitisations in your jurisdiction? What are the forms that the special purpose entity would normally take in your jurisdiction and how would such entity usually be owned?

There is no customary practice of establishing SPEs in a particular jurisdiction – this will depend on the individual facts of the transaction.

A key advantage of locating the SPE in Singapore would be the ease of incorporation and doing business here:

(a) Singapore's corporate tax rate is presently 17%, which is significantly lower than jurisdictions such as Philippines (25%), Indonesia (22%), Australia (25–30%) and on par with jurisdictions like Taiwan (20%) and Hong Kong (16.5%). The single-tier taxation system and the absence of a tax on dividends and capital gains are also pull-factors;
(b) a company can be incorporated in as little as one to three days due to Singapore's lack of red tape and efficiency, and a minimum paid-up capital requirement of just S$1.00l and
(c) other considerations like our high connectivity and relative political and social stability also facilitate the conduct of business locally.

That said, the Monetary Authority of Singapore (MAS) has imposed several requirements for banks in Singapore that wish to establish special purpose entities (SPEs) to undertake asset securitisation transactions. The separation and disclosure requirements set out in MAS Notice No. 628 have been discussed in question 7.1 above, and MAS Notice No. 648 (dealing with covered bonds – debt securities issued by a bank or through an SPE that are collateralised against a cover pool of the bank's assets) provides for an encumbrance limit of 10%, which means that the percentage of the bank's assets that can be used in the cover pool is capped at 10%. This encumbrance limit is an increase from the previous limit of 4%, allowing banks to issue a higher volume of covered bonds relative to their total assets than in previous cases. If the bank should use an SPE to issue covered bonds or to hold the cover pool, the bank and the SPE shall be treated as a single entity for the purposes of the encumbrance limit.

7.4 Limited-Recourse Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished?

The Singapore courts generally recognise and give weight to the freedom of parties to a contract. A Singapore court is likely to give effect to a contractual provision in an agreement (whether or not governed by Singapore law) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished (so long as such clauses are valid, binding and enforceable under the governing law of the agreement).

7.5 Non-Petition Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

The Singapore courts generally recognise and give great weight to the freedom of parties to a contract. That being said, the position under Singapore law is not entirely clear as to whether a contractual provision in an agreement (whether or not governed by Singapore law) prohibits the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person.

Provided a court does not find such a provision objectionable on the grounds that it is contrary to public policy or is intended to evade the application of any law that would have otherwise been mandatorily applicable to the transaction, the Singapore courts will likely give effect to the clause (so long as such clauses are valid, binding and enforceable under the governing law of the agreement).

7.6 Priority of Payments "Waterfall". Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

A Singapore court is likely to give effect to a contractual provision in an agreement (whether or not governed by Singapore law) distributing payments to parties in a certain order specified in the contract, so long as such clauses are valid, binding and enforceable under the governing law of the agreement, but subject to any statutory priorities that may arise in the event of the insolvency of the debtor under the provisions of the Insolvency, Restructuring and Dissolution Act 2018.

7.7 Independent Director. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

A Singapore court is generally likely to give effect to a contractual provision in an agreement (whether or not governed by Singapore law) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director so long as such restriction is valid, binding and enforceable under the governing law of the agreement and the law of the place of incorporation of the organisation.

That being said, the Companies Act 1967 confers on directors of a Singapore company certain statutory rights, powers and duties that cannot be excluded by way of contract and notwithstanding the constitution of the company, and a director has fiduciary duties to the company under common law. This is to ensure the proper regulation of the company. A restriction or limitation that is construed as an impermissible fetter on a director's discretion wholesale may also not be recognised.

7.8 Location of Purchaser. Is it typical to establish the purchaser in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the purchaser in your jurisdiction? If offshore, where are purchasers typically located for securitisations in your jurisdiction?

There is no customary practice to establish a purchaser in Singapore or elsewhere. Whether this should be done will ultimately depend on the individual facts of the transaction including where the seller and obligor are located, where the receivables are payable and whether there are any income or other tax implications.

As set out in question 7.1, Singapore law provide income tax exemptions for income derived by an approved securitisation company resident in Singapore from asset securitisation transactions. Depending on the location of the obligor and where the receivables are to be paid, the purchaser may also wish to consider whether the receivables may be subject to withholding tax or other value added or similar tax in the jurisdiction from which the receivables are to be paid.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in your jurisdiction, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in your jurisdiction? Does the answer to the preceding question change if the purchaser does business with more than one seller in your jurisdiction?

If a purchaser is a foreign company, it will not be regarded as carrying on business in Singapore simply because it:

(a) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts; or

(b) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time.

The above is set out in Section 366 of the Companies Act 1967. As such, if the purchaser does no other business in Singapore, it is unlikely to be regarded as carrying on business in Singapore simply by reason of its purchase and ownership or its collection and enforcement of receivables.

If the purchaser does business with more than one seller in Singapore, there is a higher likelihood of the purchaser being found to be "carrying on business" in Singapore. The factors that will be considered include:

(a) whether the purchaser has established a place of business in Singapore;

(b) whether the purchaser has employed any employee or agent in connection with the business;
(c) whether the purchaser has raised any loans or finance;
(d) whether the purchaser has undertaken any collection of information or soliciting of business; and
(e) trading within Singapore.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third-party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

The seller does not require any licence or permit *per se* to enforce and collect receivables. However, under Section 33 of the Legal Profession Act 1966, there are certain restrictions against an unqualified person acting in the capacity of an advocate and solicitor in proceedings (whether on its own behalf or as an agent for others) – should the seller wish to sue out any writ, summons or process, or commence, continue or defend legal proceedings in the Singapore courts, the engagement of an advocate and solicitor of the Supreme Court of Singapore may be required. In addition, a seller cannot, for any fee, gain or reward, directly or indirectly draw or prepare any document or instrument relating to any movable property (including receivables) or immovable property or to any legal proceeding. A seller also cannot, on behalf of a claimant, write, publish or send a letter or notice threatening legal proceedings other than a letter of notice that the matter will be handed to a solicitor for legal proceedings.

8.3 Data Protection. Does your jurisdiction have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

The Personal Data Protection Act 2012 (PDPA) governs the collection, use and disclosure of personal data by organisations. "Personal data" refers to data, whether true or not, about an individual who can be identified from that data or from that data and other information to which the organisation has or is likely to have access. The PDPA applies to all companies and entities, but generally does not apply to individuals acting in a personal or domestic basis, or any public agency. In addition, sensitive or confidential information and trade secrets may be contractually protected or secured by way of non-disclosure agreements and confidentiality agreements.

The Banking Act 1970 provides for confidentiality of information in relation to the customer information of a bank under the Banking Act 1970. "Customer information", in relation to a bank, means: (a) any information relating to, or any particulars of, an account of a customer of the bank, whether the account is in respect of a loan, investment or any other type of transaction, but does not include any information that is not referable to any named customer or group of named customers; or (b) deposit information.

Customer information must not, in any way, be disclosed by a bank in Singapore, or any of its officers, to any other person, except as expressly provided in the Banking Act 1970. A bank in Singapore or any of its officers may, for such purposes as may be specified in the first column of the Third Schedule, disclose customer information to such persons or class of persons as may be specified in the second column of that Schedule, and in compliance with such conditions as may be specified in the third column of that Schedule.

Certain information is publicly available for a fee and these include information about companies such as the particulars of its officers and shareholders, the company's registered address and share capital.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your jurisdiction? Briefly, what is required?

There are two main statutes relating to consumer protection in Singapore that the purchaser will be required to comply with. The Unfair Contract Terms Act 1977 imposes limits on the extent to which civil liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms and otherwise. The Consumer Protection (Fair Trading) Act 2003 protects consumers against unfair practices and gives consumers additional rights in respect of goods that do not conform to contract. Under these statutes, the purchaser shall not, among other things:
(a) by reference to its standard terms of business exclude its own liability for breaches of terms;
(b) take advantage of a consumer by including in an agreement terms or conditions that are harsh, oppressive or excessively one-sided so as to be unconscionable; and
(c) do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled.

If the bank acts as purchaser, there may be additional requirements pertaining to transactions with customers that the bank must comply with under the Banking Act 1970 and the Monetary Authority of Singapore's notices, guidelines and codes of conduct.

8.5 Currency Restrictions. Does your jurisdiction have laws restricting the exchange of your jurisdiction's currency for other currencies or the making of payments in your jurisdiction's currency to persons outside the country?

Singapore does not currently impose any currency restrictions and has not imposed any currency restrictions since 1 June 1978, when the Monetary Authority of Singapore suspended all provisions and obligations imposed under the various sections of the Exchange Control Act 1953 pertaining to formalities or approvals required for all forms of payment or capital transfers.

8.6 Risk Retention. Does your jurisdiction have laws or regulations relating to "risk retention"? How are securitisation transactions in your jurisdiction usually structured to satisfy those risk retention requirements?

Regulations relating to risk retention and management in securitisation transactions are set out in Part VII Division 6 of Notice 637 issued by the Monetary Authority of Singapore.

There is no fixed way in which securitisation transactions are to be structured. Instead, Reporting Banks (as defined in Notice 637) are to determine the capital treatment of a securitisation on the basis of its economic substance rather than its legal form in order to determine their regulatory obligations on exposures.

8.7 Regulatory Developments. Have there been any regulatory developments in your jurisdiction which are likely to have a material impact on securitisation transactions in your jurisdiction?

Notice 637 issued by the Monetary Authority of Singapore on

Risk-Based Capital Adequacy Requirements for Banks incorporated in Singapore was amended in July 2022.

In particular, the notable amendments made to Notice 637 include:

(a) implementing the revised Pillar 3 disclosure requirements for interest rate risk in the banking book (IRRBB) published by the Basel Committee on Banking Supervision;
(b) implementing a -100bps interest rate floor on the post-shock interest rates under the standardised interest rate shock scenarios set out in Annex 10C of MAS Notice 637; and
(c) providing additional clarity on the application of interest rate floors, interest rate caps, and pass-through rates when computing IRRBB under the standardised interest rate shock scenarios.

To elaborate, Section 1 of Annex 10D sets out the selection process for a Reporting Bank's Internal Interest Rate Shock and Stress Scenarios. A Reporting Bank should have in place a selection process for its internal interest rate shock and stress scenarios by doing, amongst others, the following:

(a) having in place a stress-testing framework for IRRBB that ensures that the opinions of the various experts on IRRBB in the Reporting Bank are taken into account. The identification of relevant shock and stress scenarios for IRRBB, the application of sound modelling approaches and the appropriate use of the stress-testing results require the collaboration of different experts (e.g. traders, the treasury department, the finance department, the ALCO, the risk management and risk control departments and the Reporting Bank's economists) within the Reporting Bank;
(b) determining, by currency, a range of potential interest rate movements against which the Reporting Bank will measure its IRRBB exposures, and ensuring that risk is measured under a reasonable range of potential interest rate scenarios, including some containing severe stress elements. In developing the scenarios, the Reporting Bank should consider a variety of factors, such as the shape and level of the current term structure of interest rates and the historical and implied volatility of interest rates. In low interest rate environments, the Reporting Bank should also consider negative interest rate scenarios and the possibility of asymmetrical effects of negative interest rates on its assets and liabilities;
(c) considering the nature and sources of its IRRBB exposures, the time it would need to take action to reduce or unwind unfavourable IRRBB exposures, and its capability and willingness to withstand accounting losses in order to reposition its risk profile. The Reporting Bank should select scenarios that provide meaningful estimates of risk and include a range of shocks that is sufficiently wide to allow the Board or its delegates, as the case may be, to understand the risks inherent in the Reporting Bank's products and activities; and
(d) incorporating into forward-looking scenarios:
    (i) changes in portfolio composition due to factors under the control of the Reporting Bank (for example, its acquisition and production plans), as well as external factors (for example, changing competitive, legal or tax environments);
    (ii) the introduction of new products where only limited historical data are available; and
    (iii) new market information and new emerging risks that are not necessarily covered by historical stress episodes.

Meanwhile, Section 2 of Annex 10D sets out the IRRBB Measurement System and Models. Furthermore, Section 3 of Annex 10D stipulates the Internal Assessment of Capital Adequacy of IRRBB.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in your jurisdiction? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest? If withholding taxes might apply, what are the typical methods for eliminating or reducing withholding taxes?

Withholding tax is applicable in Singapore in respect of certain types of payments (including interest on overdue trade accounts and interest on credit terms) paid from a resident to a non-resident. The prevailing rate of withholding tax on interest payments is 15%. Accordingly, while the payment of receivables arising from the sale of goods and services itself is not subject to withholding tax, interest charged on the same will be.

In the event that the sale of trade receivables is at an artificial discount, or part of the purchase price is artificially payable upon collection of the receivable, there is a risk that such discount or deferred purchase price will be recharacterised in whole or in part as interest, which will be wholly subject to withholding tax.

9.2 Seller Tax Accounting. Does your jurisdiction require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

There is no requirement under Singapore law for any specific accounting policy to be adopted for tax purposes by the seller or the purchaser in the context of a securitisation.

9.3 Stamp Duty, etc. Does your jurisdiction impose stamp duty or other transfer or documentary taxes on sales of receivables?

Singapore law does not impose any stamp duty or other documentary taxes on the sale of receivables.

9.4 Value Added Taxes. Does your jurisdiction impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

In respect of the sale of goods and services, a Goods and Services Tax (GST) is akin to a value-added tax or sales tax in other jurisdictions and is imposed subject to the provisions and exemptions under the Goods and Services Tax Act 1993 (the "**GST Act**"). The rate of GST applicable depends on the nature of the goods and services supplied. Certain supplies (including the supply of goods and services in relation to ships and aircrafts) are zero-rated. For most other supplies (including the provision of services as a collection agent in Singapore), the standard GST rate of 8% is applicable.

A sale of receivables is exempt from the GST under the Fourth Schedule of the GST Act.

9.5 Purchaser Liability. If the seller is required to pay value-added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

We refer to our response under question 9.4 above in relation to the sale of receivables; no GST, stamp duty or other transfer taxes are payable on the sale of receivables.

If GST is payable on the sale of goods and services under which the receivable is paid and the seller fails to file its GST returns or pay the GST due on the same within one month after the end of the accounting period of the GST return, the Inland Revenue Authority of Singapore (IRAS) may, among other things, impose a late submission and a late payment penalty on the seller. IRAS may also appoint a party (in respect of whom any monies or debt is payable to a seller) as a tax agent of IRAS and direct that such party pay over to IRAS such sums as may be directed amounting to tax due and unpaid to IRAS from the seller.

9.6 Doing Business. Assuming that the purchaser conducts no other business in your jurisdiction, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in your jurisdiction?

The purchaser may be liable to tax in Singapore if it purchases receivables from obligors in Singapore, or if it appoints the seller as its servicer and collection agent for obligors in Singapore, or if it enforces the receivables against obligors in Singapore.

9.7 Taxable Income. If a purchaser located in your jurisdiction receives debt relief as the result of a limited recourse clause (see question 7.4 above), is that debt relief liable to tax in your jurisdiction?

Bad debt relief is available if the supplier has paid GST on the supply of goods, in respect of which the consideration thereof is later written off in whole or in part. In order to claim for relief, a period of 12 months starting from the date of supply must have elapsed or the debtor has become insolvent during the 12-month period. The supplier must also have taken reasonable steps to recover the debts and the value of the supply must be equal to or less than its open market value. In the case of goods, the ownership of the goods must have been transferred to the customer.

Oon Thian Seng heads the firm's Corporate Practice and is also the Managing Partner at the firm's associated Malaysian office, TS Oon & Partners, in Kuala Lumpur. He is noted for his ability to handle transactions, involving highly technical issues and is regularly instructed by clients in the oil & gas, banking, international trade, insurance, shipping and construction industries.
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