Securitisation in Russia
Ways to Expand Markets and Reduce Borrowing Costs
POSITION PAPERS OF THE INTERNATIONAL FINANCIAL CORPORATION’S TECHNICAL WORKING GROUP ON SECURITIZATION
March 2005
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WAYS TO EXPAND MARKETS AND REDUCE BORROWING COSTS

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In spring 2003, the International Finance Corporation (IFC) established a working group (the Group) to discuss and examine whether the current legal environment in Russia would permit securitisation transactions, and which legal changes may be suggested to lawmakers to make the legal environment more favourable for securitisation transactions. The Group comprises local representatives of a number of leading international law firms and audit firms, one international rating agency, a number of Russian banks, and representatives of the Russian Duma, the Ministry of Economic Development, and the Central Bank of Russia. The Group discussed all aspects of securitisation, using (in particular) the securitisation of consumer loans as an example.

The Group has prepared this Position Paper to present its findings to interested decision makers. Part I contains a general description of securitisation, and why it is important to Russia. Part II sets out in more detail the technical aspects of securitisation. Part III sets out proposed amendments to Russian law to facilitate securitisation transactions in the Russian Federation. In Annex 1, existing securitisation laws of France, Italy, Spain, Greece, Portugal and Poland are summarized. Annex 2 contains a chart summarising the Group’s proposals on amending Russian law.
The development of the securitisation market over the last decades has had a significant effect on the world's capital markets. By introducing a new class of debt instruments, and allowing access to new participants to the market, it has expanded and deepened the world's capital market. The ability of Russian market participants to successfully effect securitisation transactions largely depends on whether Russian law allows them to implement a number of key concepts and use instruments and mechanisms which are typical of such transactions. There are three principal types of securitisation: true sale, synthetic and “whole business”. This Position Paper contains analysis of, and proposals to amend, only those legislative provisions that are applicable to classic true sale securitisation transactions.

In essence, securitisation is the financing or re-financing of income-yielding assets (for example, receivables generated in the ordinary course of business) of a company by packaging them into a tradable, liquid form through the issue of bonds or other securities. The company (usually referred to as the Originator) transfers a pool of its assets to a special purpose entity, which in turn issues bonds secured by the transferred assets.

On the world’s capital markets many types of assets can be securitised, for example, loans and credit card receivables, trade receivables and even uncontracted future cash flows. While legislation should ensure that the maximum amount of asset types can be used for this purpose, in Russia the scope of receivables eligible for securitisation is much narrower compared to other jurisdictions. In order to expand the scope of receivables that can be securitised, it is necessary to provide additional mechanisms allowing the identification of certain types of assets to be transferred (for example, in relation to rights that are identifiable rather than rights which have already been identified, as well as future receivables). Legislation is to provide for mechanisms for effective transfer of assets within securitisation transactions. Any obstacles to a valid transfer—such as pro-
hibitions of assignment of receivables, data protection or banking secrecy rules, the need to notify an obligor of the assignment in order for the assignment to be effective, the impossibility of transferring assets because of a contractual prohibition on transfer or the need to register the transfer reduce the scope of assets eligible for securitisation. Similarly, if assets cannot be transferred in a tax-neutral way, securitisation may become economically infeasible. In accordance with international practice any assets or entitlements of corporate entities and state authorities, representing future (predictable) cash flows, should be capable of being securitised to the extent that they can be effectively transferred to a special purpose vehicle through a true sale.

The “true sale” is a key concept for effecting securitisation transactions. This concept implies that once the Originator has sold or otherwise transferred assets to the special purpose vehicle, the transfer cannot be challenged, voided or otherwise reversed in the insolvency of the Originator or in any other cases other than those provided for under the transaction documentation. In typical securitisation transactions, the Originator does not notify debtors of the transfer of assets and continues to “service” them (e.g., collect the receivables) on the same terms as before the securitisation, and transfers the relevant proceeds to the special purpose vehicle, which will make payments under the securities. It is worth noting that in such case there is a commingling risk, i.e. the risk that cash proceeds from the securitised receivables will become part of the Originator’s bankruptcy estate in case of its bankruptcy. Legislation should provide for a mechanism to segregate the securitised assets from other assets of the Originator.

A special purpose vehicle is typically incorporated as an insolvency remote entity with limited legal capacity. “Bankruptcy remoteness” implies that the special purpose vehicle’s right to initiate its voluntary liquidation and reorganisation is restricted, while all parties to contracts with the vehicle agree that they will not petition for the winding-up or insolvency of the vehicle. In addition, the parties will acknowledge that the extent of any rights they may have is limited to the available assets of the special purpose vehicle. The concept of “limited purpose”, which is part of the concept of “bankruptcy remoteness” implies that by virtue of its corporate constitution (and/or legislative provisions), the special purpose vehicle may not issue any additional debt, enter into mergers or engage in any other transaction, including personnel hiring, other than those necessary to effect the securitisation.

In order to finance the purchase of the assets, the SPV issues securities (whose performance is dependent on the performance of the assets) referred to as “asset-backed securities” because the purchased assets typically represent the principal source of cash to service the securities. Although current Russian legislation permits the issue of secured bonds, existing restrictions make such bonds an ineffective instrument. In addition, one of the key concepts that should be addressed by legislation on asset-backed securities is the concept of subordination arrangements and priority of payments under such securities. The concept of “subordination arrangements and priority of payments” implies that while servicing securities and/or in the case of bankruptcy proceedings the special purpose vehicle makes payments to holders of bonds and other relevant parties in strict sequence in accordance with the priority of payments agreed in the transaction documentation. Thus certain parties will be paid out in full before others.
As a rule, in order to obtain funding on better terms, the Originator will provide additional security, which is called in the securitisation context “credit enhancement”, and also uses other means to enhance the robustness of the securitisation structure, for example, mechanisms for liquidity enhancement and instruments for hedging financial risks. Current Russian law does not provide for the use of these arrangements. Parties to securitisation transactions should be able to enter into a wide range of agreements aimed at enhancing the robustness of securitisation structures and protecting investors. Ultimately, legislation should allow the effective use of pledges of funds, bank accounts, liquid securities and securitised assets, as well as insurance of risks relating to defaults of receivables, and expressly grant judicial protection to hedging contracts made in the context of securitisation.

The main part of the Position Paper clarifies and analyses in detail the above concepts of “true sale”, bankruptcy remoteness and limited purpose of an entity, subordination arrangements and priority of payments, the mechanism for identifying, transferring and segregating assets, secured bonds, mechanisms of credit and liquidity enhancement and instruments of hedging financial risks both in the context of international practice and within the context of current Russian legislation. It also contains recommendations and comments on proposed amendments to Russian legislation to ensure use of such concepts, mechanisms and instruments by market participants in full to effect securitisation transactions.
PART I: General Overview

What is Securitisation?
There are many ways to describe securitisation but in essence, it is the financing or refinancing of income-yielding assets by packaging them into a tradable, liquid form through the issue of bonds or other securities.¹

Impact of Securitisation on Capital Markets and Other Markets
The development of the securitisation market over the last decades has had a number of beneficial effects on capital markets. By introducing a new class of debt instruments, and allowing access to new participants—corporates and others—to the market it has deepened the capital markets. Also, securitisation allows Originators to dispose of assets in an efficient way, and to achieve a more beneficial financing profile and better funding terms. It also allows investors to invest in assets which they otherwise could not access, and has greatly contributed to the availability of highly-rated bonds to investors. Thus securitisation is a highly efficient tool for diversification of financing and risks for investors and Originators alike.

Securitisation has also helped to develop and promote other markets. For instance, in the United States, the government has, through two government agencies, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), been able to promote home ownership by stimulating the mortgage market. Fannie Mae and Freddie Mac buy mortgages from lenders and fund their activities by securitising those mortgages.

In the United Kingdom, the government has used securitisation techniques to fund its “private finance initiative”, a policy designed to privatisate and outsource certain government functions such as building and operating prisons, hospitals and schools. Thus, for example, a number of hospitals in the UK have been built using funds raised in the capital markets by issuing asset-backed securities.

¹ There are three principal types of securitisation: true sale, synthetic and “whole business” (the latter is primarily used in the United Kingdom and, to a lesser extent, continental Europe). In a true sale securitisation, a company sells assets to a special purpose vehicle (the SPV) which funds the purchase by issuing securities in the capital markets. In a synthetic securitisation, the company does not sell any assets, but transfers the risk of loss associated with certain of its assets to an SPV or a bank against payment by such company of a premium or fee to the SPV. “Whole business” securitisation is essentially a loan secured by the entire assets generated by the business of the relevant company. To grant the loan, the SPV uses the proceeds of securities issued in the capital markets whereby the company grants security over all or most of its assets in favour of the holders of securities. This Position Paper deals primarily with true sale securitisation. Part II contains brief outlines of synthetic securitisation and “whole business” securitisation. Any reference in Part I to “securitisation” refers to true sale securitisation unless stated otherwise.
Types of Assets that can be Securitised

The securitisation market in the United States and Western Europe is dominated by a number of asset classes (receivables): residential mortgage receivables, commercial mortgage receivables, credit card receivables, auto loans, consumer loans, trade receivables and uncontracted future cash flows (such as toll receipts). However the type of assets that can be securitised continues to expand (some of the key innovators in the securitisation process in Western Europe are governments). In principle, any assets or entitlements providing future (predictable) cash flows can be securitised to the extent that they can be effectively transferred to an SPV through a true sale\(^2\) (or to the extent that the Originator is considered to be “bankruptcy remote”). These may, for instance, include tax revenues or utilities payments.

Brief Description of the Classic True Sale Securitisation

In a true sale securitisation, a company—the Originator or Seller—sells a pool of its assets (often, receivables generated in the ordinary course of business) to an SPV. In order to finance the purchase of the assets, the SPV issues securities in the capital markets. The securities are referred to as “asset-backed securities” because the purchased assets typically represent the principal source of cash\(^3\) to service the securities.

It is imperative that once the sale and transfer of the assets to the SPV has been effected, it cannot be challenged, voided or otherwise reversed on the insolvency of the Originator or otherwise. This concept is referred to as true sale. Whether a transaction constitutes a true sale under the applicable law (notably, whether it will be recognised as such by the competent court on the Originator’s insolvency) must be established through a legal analysis of the transaction.

The legal insulation of assets from the Originator through a true sale may help to achieve one of the main benefits of securitisation, access to cheaper funding. If the credit quality of the securitised assets is higher than the credit quality of the Originator as a whole, the true sale may allow the Originator to obtain funding at better terms than would be the case through an on-balance sheet loan or a corporate bond issue. Thus Originators with a relatively modest capital market rating can obtain funding through asset-backed securities which have a relatively high rating from a rating agency or agencies.

Often, the sale and transfer of the securitised assets will not be disclosed to certain third parties (such as, in the case of receivables, the relevant obligors (Obligors)). The Originator will often continue to “service” the assets (e.g., collect the receivables) on the same terms as before the securitisation, and transfer the relevant proceeds to the SPV. Also typically, in order to enhance the quality of the assets and obtain funding at better terms, the Originator will provide security, called “credit enhancement”. Credit enhancement may be provided in a number of different forms, some of which are described in Part II.

True sale securitisations can be split into two types—“standalone” and conduit transactions. These are described in Part II.
ROLE OF THE RATING AGENCIES
Most asset-backed securities are rated by one or more international rating agencies to enhance their attractiveness to investors and provide a guideline for their pricing. The rating agencies will closely examine the legal structure of the transaction (notably, the true sale element), the quality of the securitised asset pool and the ability of the Originator to service the assets. Based on this analysis and the credit enhancement mechanisms being used (and on other supporting arrangements, if any), the rating of the securities will be determined.

BENEFITS OF SECURITISATION FOR ITS PARTICIPANTS
Originators—including corporates, banks and public sector entities—securitise their assets for a variety of different reasons. The following is a list of the most common reasons for securitisation:

- raise funding by selling the securitised assets to the SPV;
- limit credit exposure to assets. Typically, following securitisation the Originator’s credit exposure will be nil, or limited to any credit enhancement it may provide. In the case of banks, this may allow them to obtain regulatory capital relief. At the same time, the Originator often retains the ability to extract future profits from the assets;
- improve balance sheet ratios. A true sale securitisation may move the assets off the Originator’s balance sheet, and replace them by cash, thus contributing to an improvement of the relevant balance sheet ratios. For instance, to the extent that proceeds of the securitisation are used to repay existing liabilities, this may reduce the Originator’s leverage;
- tap different funding sources. Securitisation allows the Originator to diversify its funding sources away from banks and tap the capital markets (almost) directly, without having to issue securities on its own. Originators who already have established direct access to the capital markets (e.g., companies who have already issued corporate bonds) sometimes enter into securitisations to demonstrate to the capital markets that securitisation is available to them as a source of funding and to access different types of investors;
- reduce funding costs. The weighted average cost of the securitisation may be lower than the cost of the Originator’s current bank or other debt. Notably, this advantage often arises when the credit quality of the securitised assets is higher than the credit quality of the Originator’s balance sheet as a whole; and
- match assets and liabilities (securitisation provides a more flexible method by which assets and liabilities can be matched).

Investors in asset-backed securities can benefit in a number of ways, including the following:

- through asset-backed securities, they can invest in asset classes and tranches with varying degrees of risk at their choice and generate the associated returns. This offers investors the opportunity to optimise the structure of their portfolios and access markets which otherwise they could not invest in;
- asset-backed securities have historically often been less subject to price fluctuation as compared to corporate bonds;
- asset-backed securities are known to offer a higher return than comparably-rated government, bank and corporate bonds; and
asset-backed securities are usually not susceptible to event risk or the risk of a rating downgrade of a single borrower.

It is worth noting that securitisation is generally not perceived as a tax-efficient structure. Typically, the parties seek to keep the effects of securitisation on the participants' tax position (including profits tax and value added tax) neutral.

**The Securitisation Market in Europe and the United States**

The securitisation market began in the 1970's in the United States with the securitisation of residential mortgages by the Government National Mortgage Association. During the 1980's the market continued to develop in the United States with the introduction of new asset classes—in particular, auto loans and credit card receivables. It started to grow exponentially in the 1990's, expanding to virtually all types of assets which yield future cash flows. The market now represents one of the most prominent fixed income sectors in the United States, with annual new issues of approx. USD 450 billion.

In Western Europe the securitisation market developed in the late 1980's and early 1990's. The initial key asset classes were residential mortgages and consumer loans. The market developed rapidly in the 1990's, particularly in the United Kingdom, France, Spain, the Netherlands, Belgium, Germany and Italy. New European issues in 2003 amounted to approx. EUR 160 billion. Lately, securitisation has also been increasingly used as a funding instrument by a number of European governments and other public authorities.

**Potential Benefits of Securitisation for Russian Capital Markets**

Securitisation could be a powerful tool to create new high-quality funding and investment opportunities in Russia’s domestic capital markets. Russian companies and banks, and also government and other public sector entities, could gain access to relatively inexpensive funding. Institutional investors such as pension funds and insurance companies could invest their funds in, and earn returns from, low risk domestic assets. The wide use of securitisation could foster home ownership as well as add liquidity to the domestic credit markets. Generally, securitisation could help to deepen and greatly expand the Russian capital markets. Last but not least, the federal government, regional governments, and large municipalities, could use securitisation to obtain funding or finance specific projects.

It should be noted that the recently enacted Russian Law on Mortgage-Backed Securities represents a very important first step in legislative attempts to introduce new legal concepts promoting domestic securitisations of mortgage loans in the Russian market.

The Law envisages two types of mortgage-backed securities (mortgage participation certificates and mortgage-backed bonds) with a view to reflect the pass-through and pay-through concepts underlying most securitisations. However, the Law on Mortgage-Backed Securities was adopted in the absence of a general legislative framework for securitisations. Thus, most of the new legal concepts it contains (such as, inter alia, mortgage pool, mortgage agent, fiduciary management of mortgage pool) are not sufficient to launch domestic asset securitisations and, as such, require further elaboration and amendments to other laws.
Both the Russian state authorities and market participants are already seeking to improve the provisions of the Law on Mortgaged-Backed Securities. On the understanding that comprehensive reform of Russian legislation is needed to overcome the key legal and regulatory obstacles for securitisation, it is highly desirable to ensure that the work on improvement of the Law on Mortgaged-Backed Securities and the introduction of general securitisation requirements to Russian legislation is coordinated and carried out simultaneously.

Securitisation Laws Adopted by European Countries

In recognition of the benefits of securitisation, and the need of market participants to use securitisation as a funding and investment instrument, a number of European countries have adopted a number of specific securitisation laws. These countries include France, Italy, Spain, Portugal, Greece, and Luxembourg. Further, Poland has begun to draft securitisation laws. The content of these laws differs as each has been specifically designed to overcome legal obstacles which had previously prevented the use of securitisation in the relevant jurisdiction. A summary of some of these laws is provided in Annex 1 to this Position Paper.

PART II: Technical Aspects of Securitisation

Parties and Their Roles

The key parties involved in a securitisation and their roles are as follows (further parties may be involved depending on the structure of the individual transaction):

- **Originator**—owner and “generator” of the assets to be securitised. Originators may be banks and other financial institutions, corporates, government authorities and municipalities;
- **Seller**—seller of the assets to be securitised. In many cases, the Seller and the Originator in a transaction are identical. This is however not necessarily the case. For instance, an entity may purchase assets from its affiliates and then act as the main Seller in a securitisation;
- **Purchaser**—a special purpose vehicle (SPV) which purchases the assets to be securitised. The Purchaser funds the purchase price by issuing asset-backed securities in the capital markets (in this capacity, the Purchaser is also referred to as the Issuer);
- **Servicer**—services the assets to be securitised (frequently the Originator retains this role). Where receivables are securitised, the Servicer will receive, manage and, if necessary, recover the receivables through legal proceedings;
- **Back-up Servicer**—will service the assets if the Servicer is unable to do so, or where the Purchaser exercises its right to remove the Servicer (for instance, as a result of the insolvency of the Servicer);
- **Liquidity Facility Provider**—provides a liquidity facility to the Issuer. Typically, a liquidity facility is provided in conduit transactions where the Purchaser issues revolving short-term commercial paper to fund the purchase of the assets. The Purchaser may draw upon the liquidity facility if it is unable to refinance maturing commercial paper because of a market disruption. The liquidity facility thus secures commercial paper investors against a default in such a case. Liquidity facilities are also sometimes used in standalone securitisations;
- **Investors**—purchasers of the asset-backed securities. Examples of investors in the securitisation market are: pension funds, banks, mutual funds, hedge funds, insurance companies, central banks, international financial institutions and corporates;

Further details of their roles will be set out in Paragraph “Typical Securitisation Structures” below (see page 11).
Lead Manager—arranger and structurer of the transaction (in the context of conduit transactions, also referred to as Programme Administrator). The Lead Manager is often the primary distributor of the asset-backed securities in a particular transaction. Individual distributors are also referred to as Managers;

Rating Agencies—rate the asset-backed securities. The three key rating agencies in securitisation are Standard & Poor’s, Moody’s and Fitch;

Hedge Providers—hedge any currency or interest rate exposures the Issuer may have;

Cash Administrator—provides banking and cash administration services to the Issuer;

Security Trustee—acts as an asset manager for the secured creditors of the Issuer (notably, holds the Issuer’s assets granted to it as security for the Issuer’s obligations, on behalf of the Investors);

Note Trustee—acts on behalf of the holders of the asset-backed securities;

Auditors—if necessary they audit the asset pool as may be required under the documentation of the relevant transaction.

**Typical Securitisation Structures**

**Classic Securitisation Through True Sale**

![Diagram of a typical true sale securitisation structure]

**Description of the Structure**

The above diagram shows a typical structure for a true sale securitisation. The Originator (for instance a bank selling mortgages) sells certain assets (the Assets) to the Issuer. The Assets will be serviced by the Servicer (often the Originator). For instance with respect to mortgages sold to the Issuer, the Originator will continue, on behalf of the Issuer, to collect principal and interest from borrowers on such mortgages and will, where appropriate, take enforcement action in respect of such defaulted mortgages. As the Issuer has no employees it will appoint a Cash Administrator to make all relevant payments on its behalf and is also likely to appoint a company to provide company secretarial and other administrative functions.

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*See page 13.*
The Issuer funds the purchase of the abovementioned assets by selling asset-backed securities (whose performance is dependent on the performance of the Assets) (the *Bonds*) to the Managers who will in turn sell those securities to the Investors. Investors will be free to sell the Bonds or retain them.

**Cash Flow Types of Securitisation Structures**

There are three most common types of securitisations from the standpoint of organising cash flow: Collateralized Debt, Pass-Through and Pay-Through structures.

*Collateralized debt* is the form most similar to traditional borrowing secured by assets. The owner of assets borrows money and pledges assets to secure repayment. The assets pledged may be assessed according to their market value upon sale or their ability to generate a cash flow stream. The debt instrument need not match the cash flow configuration of any of the assets pledged.

*Pass-through securitisation* is a way of securitising assets which generate a regular cash flow, by selling direct participation in the pool of assets. In other words, a pass-through certificate represents an ownership interest in the underlying assets and thus in the resulting cash flow. Principal and interest collected on the assets are “passed through” to the security holders; the seller acts primarily as a Servicer.

In a *pay-through securitisation*, the assets are typically held by a limited purpose vehicle (the Issuer) that issues debt collateralized by the assets. Like in case of a pass-through, the debt service is met by cash flow “paid through” to investors out of the pledged collateral. Investors in a pay-through bond are not direct owners of the underlying assets; they have simply invested in a bond backed by certain assets. Therefore, the issuing entity can manipulate the cash flows into separate payment streams. Thus pay-through securities may be structured so that the cash flows generated by the assets can be reconfigured to support forms of debt unlike those of the underlying assets.

**Structure of the Issuer SPV**

Issuers are usually incorporated as insolvency remote entities. By virtue of its corporate constitution, the Issuer may not engage in any transactions other than those necessary to effect the securitisation (“limited legal capacity”). As a consequence this the SPV will not be allowed to issue any additional debt or to enter into mergers or similar transactions. All parties to contracts with the Issuer agree that they will not petition for the winding-up or insolvency of the Issuer, and the Issuer undertakes not to enter into voluntary liquidation. In addition, the parties will acknowledge that the extent of any demands they may have is limited to the available assets of the Issuer, and subject to the order of priority (the “payment waterfall” or “agreed payment procedure”) agreed in the transaction documents. Where the Issuer is a company, it is often owned by a charitable trust, which ensures independent control of the Issuer. Often the Issuer’s assets will be pledged to the respective note holders.

**Bonds: Listing and Investor Guidelines**

Bonds are often listed on a stock exchange (in Europe the Irish Stock Exchange and the Luxembourg Stock Exchange are two of the most popular). One of the principal reasons for listing Bonds is that Investors’ internal investment rules require them to invest in listed securities. In addition, such rules may also require that the Bonds be rated (many
Investors require that Bonds are rated at least at investment grade or above) by a rating agency. The higher the rating a Bond achieves the wider the potential investor base and the lower the interest rate payable on such Bond—a high rating indicates a high likelihood the Issuer will be able to pay interest and principal on the Bonds.

**Conduit vs. Standalone Transactions**

In conduit transactions, the Purchaser (also referred to as Conduit) usually purchases and securitises assets from a number of different Originators. The Purchaser refinances these purchases by issuing asset-backed commercial paper in the capital markets. Commercial papers are short-term fixed income securities, the interest on which is typically reflected by a discount on the issue price. At maturity, commercial papers are redeemed at par. Depending on the structure, the Purchaser may also borrow the necessary funds from another entity (the CP Issuer) which issues the commercial paper. To address the risk of a disruption in the commercial paper markets, the Purchaser (or CP Issuer) must obtain stand-by funding through liquidity facilities from highly rated banks. Conduits are usually organised by banks who arrange securitisations for their clients. Those banks might also provide additional support to the Conduit, in the form of a “credit enhancement programme” if required by the Rating Agencies.

In a standalone transaction the Purchaser only purchases assets and issues asset-backed securities in the context of a single securitisation transaction. Typically, the Purchaser in a standalone transaction does not issue commercial paper, but securities with a term sufficiently long to cover the entire transaction. Investors are protected against the insolvency of the Purchaser through a security structure whereby the Purchaser pledges its entire assets to a Security Trustee, who holds the assets for the benefit of the Investors.

**Synthetic Securitisation**

The above diagram shows a typical structure for a synthetic securitisation. As you will note it is very similar to a “true sale” and most of the structural features are the same. The key difference is that the Originator does not sell any assets to the Issuer (and
therefore does not obtain any funding or liquidity under the transaction). Instead the Originator will enter into a credit default swap with the Issuer in respect of an asset or pool of assets. Under this contract the Issuer will pay the Originator an amount equal to any credit losses suffered in respect of such asset or pool of assets (less a minimum threshold amount—similar to an “excess” in insurance). The Originator’s exposure to those assets is therefore transferred to the Issuer. The Originator in return will pay a fixed amount to the Issuer, usually on a quarterly basis.

The Issuer will issue Bonds to Investors via the Managers. The Issuer’s ability to repay the principal and pay interest under the Bonds will depend on whether the Issuer has to make payments under the credit default swap. The Issuer’s income streams in a synthetic transaction are the fixed amounts paid by the Originator under the credit default swap and interest amounts received on the collateral.

In order to collateralise its obligations under the credit default swap and the Bonds the Issuer usually purchases securities as collateral. These are normally highly rated government debt securities. They also need to be relatively liquid in order that they can be sold and the proceeds used to pay amounts under the credit default swap or Bonds, as the case may be.

“Whole business” Securitisation

This type of securitisation originated in the United Kingdom. It involves the provision of a secured loan from an SPV to the relevant Originator. The SPV issues bonds in the capital markets and lends the proceeds to the Originator. The Originator services its obligations under the loan through the profits generated by its business. The Originator grants security over most of its assets in favour, ultimately, of the Investors. “Whole business” securitisation is sometimes used to finance a taking private or management buy out of the Originator.

Typical Elements of a Structure

The following describes structural features which are often used in transactions to improve the credit quality of the issued securities and better protect Investors’ interests.

- A key feature is that payments made by the Issuer to holders of Bonds and other relevant parties are made in strict sequence in accordance with a priority of payments (also commonly called a “payment waterfall” or “agreed payment procedure”). Thus certain parties will be paid out in full before others.

- The quality of the Bonds can be enhanced by issuing a number of tranches or classes of Bonds. For instance, if two tranches are issued Tranche A will be senior to Tranche B. Thus, payments on Tranche B will be subordinated to payments on Tranche A (payments are usually split between principal and interest with both types being subordinated) by way of the priority of payments. Therefore no payments can be made in respect of Tranche B until payments due on that date have been made in full in respect of Tranche A. Tranching of a bond issue is a form of credit enhancement (i.e. it enhances the credit of the more senior notes—Tranche A in the example—and enables them to attain a higher rating). Pursuant to the new Basel II Accord on capital adequacy, drafted by the Basel Committee on Banking Supervision, the issue by an SPV of at least two tranches of securities is a standard and even necessary element of the classic securitisation transaction.
If the Originator is not able to allocate inflows of cash from its debtors at the necessary speed, a pledge of the bank account at which proceeds from the Assets arrive, or the establishment of an escrow or blocked account structure could be used to mitigate the commingling risk.

Other common forms of credit enhancement are cash deposits from Originators and reserve accounts, which may be formed of a deferred portion of the purchase price payable for the Assets. The Issuer will utilise the credit enhancement available when there is a payment default or other loss in respect of the Assets.

The Issuer should also hedge any currency or interest rate risk that it may have, through hedging contracts with highly rated counterparties. If, for instance, the Assets provide an income which is fixed rate but some or all of the Bonds are floating rate the Issuer will enter into an interest rate swap which will hedge its interest rate exposure (an increase in floating rates would lead to the Issuer having to pay more under the Bonds while receiving the same income from the Assets). The Issuer will pay the Hedge Provider a fixed rate and will receive a floating rate. Similar hedging arrangements are necessary if the currency of the Assets differs from that of the Bonds.

Typically the Hedge Provider is an investment bank (often the Lead Manager). The Hedge Provider will sometimes enter into what is called a “back-to-back” hedge with the Originator which will pass on the relevant risk onto the Originator.

Frequently a liquidity facility is used. A liquidity facility is a stand-by bank facility which may be drawn in the event that the Issuer is unable to repay maturing debt. Commonly, the liquidity facility may be drawn in case of a market disruption (if the securities are issued in the form of revolving commercial paper), but also if the quality of the Assets has decreased in such a way as to no longer allow for funding of purchases of additional assets through issuance of highly rated asset-backed securities, or if cash flow shortages occur. Generally however, the liquidity facility may not be used to refinance defaulted Assets and thus, is not a Bond credit enhancement.

In standalone securitisations the Issuer will typically grant security to a Security Trustee over the Assets and all its rights under the contracts it enters into in favour of the holders of the Bonds (the Investors) and—if applicable—other parties to the transaction. The Security Trustee will act on behalf of these secured creditors. In order to facilitate communication with the holders of the Bonds a Note Trustee is appointed which acts on behalf of Investors.

Role of the Rating Agencies

Rating Agencies provide, in the context of the securitisation market, a credit rating of the asset-backed securities issued by the Issuer. A credit rating is (usually) an opinion on the likelihood that the Issuer will be able to pay full principal and interest on the rated security in a timely manner in accordance with the terms of the security.

Rating Agencies normally consider the type and quality of assets to be securitised; the structure of the transaction and how it proposes to provide Investors with payments of interest and principal; the risks in the transaction (including market, counterparty, sovereign and legal risks); the flow of funds including coverage of all the expenses of the transactions; and debt service coverage whether internal or from a third party credit and/or liquidity provider. The entire analysis is, typically, effected on the basis of criteria published by the respective Rating Agency.

*Cf. Paragraph 2.2 above for an explanation of the term "stand-alone transaction".*
Rating Agencies play an integral role in securitisations (at least those that are rated) and have a considerable degree of input with respect to how cash flows and the legal framework are structured in a securitisation.

**Impact of a New Accord of the Basel Committee on Banking Supervision Regarding Capital Adequacy (Basel II)**

Basel II is the name of the consultation document which amends the current bank standards for capital adequacy (the Basel Capital Accord originally signed in 1988). Basel II establishes the overall methodological approaches to calculating capital adequacy, the principles for implementing the special procedures for monitoring capital adequacy by the bank supervisory authorities, and also the demands for banks to disclose information on capital and risk in order to strengthen market discipline.

Both the Basel I Accord and the new Accord determine that the minimum amount of owned equity (capital) for credit institutions is to be based on the principle of recording the quality of bank assets and the associated risks. In comparison with the current Accord, Basel II sets out new, more flexible approaches for the assessment of risk under a given asset type. These principles provide (i) the possibility of using external ratings published by specialised rating agencies, and also (ii) the possibility for banks to use their own methods of internal asset risk assessment, or internal ratings. Basel II is currently scheduled for implementation in early 2007. The Russian Central Bank proposes to implement Basel II in 2009.

Basel II has a special Paragraph on securitisation which will influence the procedure for completing securitisation transactions. (Chapter IV Credit Risks—Securitisation Framework). Basel II will determine to what extent, and under what conditions a bank may obtain regulatory capital relief if it securitises its assets, as well as how much regulatory capital, calculated in accordance with banking law, must be allocated by a bank purchasing asset-backed securities. Basel II will also contain rules on how much regulatory capital, calculated in accordance with applicable law, should be provided for the provision of liquidity enhancement facilities.

Basel II defines a classic securitisation transaction as a tranche structure. The risk assessment method for banks participating in securitisation transactions in order to determine their capital adequacy is based on risk assessment of the participants’ positions caused by a particular class of security.

Whether Basel II will have a direct impact on domestic Investors and Originators in the Russian Federation will depend on what variants for implementation of the Accord are selected by the Russian Central Bank in its capacity as the national body for bank supervision. However that turns out, Basel II will affect the ability of Investors which are subject to Basel II to invest in Russian asset-backed securities.
Accounting Rules

Depending on the accounting rules applying in the individual case, true-sale securitisation will in many cases have an impact on the financial statements of the transaction participants, notably the Originator. For instance, the sale of assets might result in those assets being removed from the Originator’s balance sheet. At the same time, the Originator would record an increase of its cash position, reflecting receipt by it of the purchase price. Also, in certain cases the Originator might have to consolidate the SPV.

The effects of securitisation on the Originator’s financial statements will vary depending on the jurisdiction and the accounting rules which have to be applied. The following gives a brief overview of the treatment of securitisation under IAS*, because in a large number of jurisdictions consolidated financial statements of large corporations are prepared in accordance with IAS. One of the standards which is particularly applicable to securitisation under IAS (“IAS 39”) has changed only recently, in December 2003, and therefore, the description given below is subject to further review based on the experience of applying the new rules.

For consolidated financial statements, the first step is to consolidate any SPV in accordance with SIC 12. In essence, the SPV will have to be consolidated if any of the following are true:

- its activities are conducted on behalf of the Originator;
- decision making powers with respect to the SPV have been retained by the Originator or delegated via an “auto-pilot” mechanism; and
- the majority of any economic benefits which will be distributed by the SPV, have been retained by the Originator; and/or if the majority of the residual or ownership risks have been retained by the Originator.

The next step is to determine whether an asset has been actually transferred to a third party. The assumption of a contractual obligation to pay the cash flows to a third party, for example through the issue of securities by an SPV, can in some circumstances qualify as an asset transfer, subject to certain conditions.

The next step is to consider whether the group has retained substantially all the risks and rewards. If it has, the assets remain on its balance sheet. If not, then one considers whether control has been retained. If the group has not retained control it derecognises the asset and recognises any new rights or obligations arising, i.e. 'components approach'. If the group retains control it continues to recognise the asset to the extent of its continuing involvement.

Securitisations in particular will be affected by the new rules, and existing structures may fail to qualify as a result of the transfer of the risks and rewards test. Consequently securitised assets will remain on an Originator’s consolidated balance sheet. If, however, they do pass the risks and reward and control tests, the continuing involvement provisions will require a complex calculation to determine the amounts to be retained on the balance sheet and the extent of any gain or loss on sale.

* See page 13 above for an explanation of the term “Standalone Transaction”.

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Key Requirements for a Legal System to Allow for Securitisation Transactions

There are a number of key legal issues which arise in most securitisation transactions. A positive answer or a workable solution with respect to those issues is a prerequisite for a successful securitisation. Set out below is a brief list of some of the key issues that arise or must be considered. At the same time, this list summarizes which requirements a legal system should meet for securitisation to be legally feasible.

- Generally, only assets capable of being freely transferred can be securitised. Any obstacles to a valid transfer—such as prohibition of assignment of receivables or data protection or banking secrecy rules, where these can prevent the validity of a transfer—reduce the scope of assets eligible for securitisation;
- Ability to effect a true sale: the sale and transfer of assets which are to be securitised should be irreversible. It should not be affected by the insolvency of the Originator. In particular, it should not be subject to a risk re-characterisation or insolvency claw-back;
- The transfer should not be overly costly or cumbersome. For instance, any cumbersome perfection requirements, such as the need to notify an Obligor of the claim being assigned, or the need to register the transfer, may reduce the scope for securitisation and increase transaction costs;
- It should be possible to effect assignments of receivables without notification to the Obligor. The Originator should be allowed to service securitised assets for the Purchaser;
- The parties should be able to enter into effective arrangements to secure performance of obligations under the transaction, to provide credit enhancements, mitigate commingling risk and/or to arrange for a Security Trustee. Cash, bank accounts and marketable securities as well as securitised assets should be capable of being effectively pledged. The pledge should be capable of giving the pledgee an enforceable, first ranking right in the insolvency of the pledgor or Originator (or, as the case may be, Issuer). Enforcement of security must be transparent and relatively efficient;
- In order to achieve insolvency remoteness of the Issuer, limited recourse provisions and non-petition covenants agreed between the parties should be enforceable;
- Subordination arrangements should be enforceable. For instance, an agreement whereby the rights of Investors in a “junior” tranche of asset-backed securities are subordinated to the rights of Investors in “senior” tranches, should be enforceable in the Issuer’s bankruptcy; and
- Securitisation should be capable of being effected in a tax-neutral way. Any transfer taxes or stamp duties, or similar levies increase transaction costs and make securitisation less feasible. The participants should not suffer any adverse income tax or VAT consequences as a result of securitisation.
**Tax Treatment of Securitisation**

Creating a securitisation transaction typically results in a transfer of rights or assets, although from the standpoint of a company’s business the securitisation of itself does not lead to any variation in operational cash flows related to the securitised assets. In a typical transaction, the Originator of the asset pool transfers or sells the portfolio to a new owner (usually an SPV) and this new owner, known as the Issuer (or Purchaser), will then seek funding by issuing debt securities (Bonds or commercial papers).

Ensuring that Investors can know the tax consequences of a securitisation transaction with certainty in relation to both the Originator and the Issuer is a vital aspect of any securitisation structure, bearing in mind that the key factor for the economic desirability of a securitisation transaction from the tax standpoint is the achievement of tax neutrality. This means ensuring as far as possible that the securitisation transaction does not lead to any additional tax liabilities arising nor to any acceleration of tax liabilities than would have been the case had the securitisation not taken place.

In practice, in many cases a securitisation transaction may lead to some level of tax cost, particularly in relation to financial cash flows (interest payments, commission etc.), although in these cases it is important that such costs are known with certainty in advance such that a decision can be taken by the Originator on whether the costs can be considered as acceptable deal costs having regard to the overall commercial benefits of the transaction.

A high degree of predictability in relation to the tax position of the Issuer is also a pre-requisite of any securitisation transaction since the market will require a high degree of certainty that there will be no unexpected tax charges arising in the Issuer. Indeed, in some cases the Originator may be required to reimburse the Issuer for any unforeseen tax charges which may arise.
PART III: Actions to be Taken

The main focus of the following comments is the current domestic environment for securitisation transactions in the Russian Federation. Further, where appropriate, cross-border issues are briefly touched upon.

Existing Environment

As discussed in Part I above, securitisation could offer multiple benefits to Russian market participants. The current legal and regulatory environment in Russia, however, does not meet the requirements which are pre-requisites for securitisation to be feasible. The principal legal and regulatory impediments to effecting securitisation transactions are as follows:

- the scope of receivables eligible for securitisation is severely narrowed by the stringent demands imposed by the courts and legal doctrine to the assignability of receivables;
- securitisation participants cannot ensure a “true sale” of securitised receivables to the Purchaser due to re-characterisation and insolvency claw-back risks in case of the Originator’s bankruptcy;
- it is not clear which form of legal entity should be used to aptly reflect the Purchaser’s economic role and what special statutory requirements will apply to the Purchaser;
- bankruptcy remoteness of the Purchaser cannot be guaranteed under existing legislation;
- traditional credit enhancement arrangements, such as bank account pledges, escrow accounts, tranching asset-backed securities, insuring the risks of Obligors defaulting on their obligations, and hedging are either not available under existing legislation or are not recognised by the courts;
- it is untested whether the Originator may continue servicing securitised receivables
and whether a commingling risk may be avoided on the Originator’s bankruptcy;

- the absence of clear guidance on handling information subject to statutory provision on banking secrecy and data protection may complicate the transfer of receivables to the Purchaser;

- Russian law on the securities market does not provide for effective instruments (securities) for implementing securitisation transactions;

- currency control regulations contain provisions which can increase the costs of securitisation transactions; and

- existing tax legislation does not allow securitisation to be effected in a tax-neutral way.

The creation of a favourable environment for securitisation transactions would require a complex review and reform of Russian law. In our opinion, the most expedient and reliable way of implementing this reform is that a law specifically addressing asset securitisation (the Securitisation Law) be adopted and a number of existing laws be amended. Our key proposals on amending Russian legislation are summarised in Annex 2 to this Position Paper. Further, key areas that need to be addressed by the legislature and proposed amendments to existing legislation are considered in greater detail in Paragraph “Proposed Aspects of Reform” below.

**Proposed Aspects of Reform**

This overview is intended to set out key areas to be addressed in order to create a favourable legal framework for securitisation transactions in Russia. It does not seek to give a comprehensive legal analysis of issues which may potentially arise in this regard. Below there is a brief discussion of the key legal and regulatory obstacles which may obstruct the implementation of asset securitisation transactions in Russia.

**Receivables Eligible for Securitisation**

At present, the scope of receivables which may be securitised in Russia is severely limited in comparison to most jurisdictions. In order to expand types of receivables eligible for securitisation, the legislature might (i) permit the assignment of pools of receivables which are identifiable rather than those which have already been identified, (ii) permit the assignment of future receivables, and (iii) recognise the assignability of receivables for securitisation purposes notwithstanding prohibition of assignment in the contract with an Obligor.

Generally, only assignable receivables are eligible for securitisation. In most jurisdictions most types, or even any type, of receivables which produce a constant and predictable cash flow may be securitised. By contrast, the scope of receivables that may be securitised in Russia is limited by the rigid view taken on the assignability of rights by Russian courts and legal doctrine.

**Identification of Receivables**

In a classic securitisation the Originator assigns to the Purchaser pools of receivables having standardised terms. In such transactions, it may be very difficult to identify in detail each receivable forming a pool. For this reason, these techniques may not be used in Russia where courts and legal doctrine impose stringent requirements on the identification of assigned receivables.
In accordance with Russian court practice, an effective assignment agreement is one which indicates the obligors, legal grounds, maturity date and amount of assigned receivables. This may be illustrated by a case where a court recognised an agreement providing for the assignment of rights under all contracts made by particular parties throughout a particular period of time as ineffective. The court concluded that the parties had failed to properly identify the receivables to be assigned.

Such a stringent approach substantially diminishes the economic advantages that securitisation techniques may offer to market participants. We would propose that the legislature takes steps to bring the securitisation of asset pools into line with international market practice. In setting a legal framework for securitisation transactions, the legislature might expressly permit an assignment of rights that are identifiable rather than rights which have already been identified.

Assignment of future Cash Flows

At present, Russian law severely limits the possibility of assigning future receivables unless performed in the context of factoring arrangements. This is true in relation to both receivables under existing contracts and cash flows under future contracts. Factoring, however, has limited use in the context of securitisation for the following reasons. The Russian Civil Code states that only a claim arising from a supply of goods, performance of works or rendering of services may be assigned by way of factoring. It is therefore argued that such a narrow definition prohibits the assignment of certain other types of receivables (such as receivables under loans, mortgages, etc.) by way of factoring. Furthermore, at present, courts do not allow for the transfer of receivables by way of factoring to a purchaser other than a credit organisation (please refer to page 26 for a more detailed discussion of this limitation).

Russian courts have adopted the clear-cut view that assignment is only possible where the assigned claim arose prior to the assignment, is not under dispute, and is not conditional upon performance by the counterparty. Courts have ruled that assignment is permitted provided that the assignor has fully performed its obligations under the underlying contract whose rights are being assigned, so that the obligor has no open claims against the assignor. In the case of power supply and other long-term contracts, Russian courts only allow suppliers to assign matured claims for payment by customers for goods already supplied in a particular period.

In terms of securitisation transactions, the above approach of Russian courts limits the scope of future cash flows eligible for securitisation to outstanding receivables under otherwise fully performed contracts. This substantially reduces the potential for securitisation techniques on the Russian market.

We propose therefore that assignments made in the context of securitisation should be regulated in the same fashion as those made in the context of factoring arrangements. In particular, we suggest the legislature expressly address the assignment of future claims for securitisation purposes and clarify that such claims are to be described in the assignment contract in such a manner so as to make them identifiable on the maturity date. It would also be advisable to establish that Originators may assign claims prior to performance of the obligations under underlying contracts, and also claims due under Originators’ future contracts.

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1 A ruling of the Presidium of the Higher Arbitrazh Court, i.e. the highest state commercial court.
2 It should be noted that within the existing legal framework, future claims would be deemed transferred to the Purchaser only when the relevant claims come into existence. This may cause further problems, e.g. in the event the Originator defaults on underlying contracts, or goes bankrupt.
Contractual Prohibition on Assignment

Russian law does not contain a general rule addressing the assignment of rights made in violation of anti-assignment clauses in the contract underlying the assigned receivable. Express statutory provisions recognising the validity of such assignments were only adopted with respect to factoring transactions. In the absence of general guidelines, Russian courts have taken a stringent view on this issue and have consistently ruled on the invalidity of assignments which are in breach of a contractual prohibition to assign.

We suggest that the legislature take due account of the specific nature of securitisation techniques and international business practice. To this end, we further suggest that assignments made in the context of securitisation should be regulated in the same fashion as those made in the context of factoring arrangements. The assignability of receivables for securitisation purposes, notwithstanding prohibition on assignment in the underlying contract, needs to be expressly recognised by legislative provisions.

True Sale of Receivables

A “true sale” of receivables may not be guaranteed under existing legislation and court practice, which allow for it to be re-characterised or set aside on the Originator’s bankruptcy. In order to ensure that a “true sale” is more workable, the legislator should (i) recognise the securitisation scheme in an explicit statutory provision and (ii) set restrictions on challenging the assignment of receivables for securitisation purposes on the Originator’s bankruptcy. It is also important that the legislature enact measures allowing the Purchaser to enforce the sale of receivables without the Originator being involved, and resolve the issue of establishing priority between the claims of several competing assignees.

In a classic securitisation it is crucial for parties to ensure the “true sale” of receivables, i.e. their complete, final and binding transfer to the Purchaser. Current Russian law allows, however, for the re-characterisation of a “true sale” or for setting it aside in the event of an Originator’s bankruptcy.

Risk of Re-characterisation

At present, market participants may take little comfort from the fact that Russian law permits them to freely choose transaction schemes, including those which are not expressly addressed by statutory provisions. Despite this liberal rule under Russian law, courts are often reluctant to recognise non-traditional financing structures used by market participants. When faced with a non-traditional structure, courts often re-characterise them arguing that their content does not in fact correspond to their form. A securitisation transaction in Russia is therefore exposed to the risk of a court possibly re-characterising the assignment of receivables to the Purchaser. The courts may be especially concerned with situations where an Originator remains linked with the assigned receivables by retaining an economic interest in the receivables or otherwise. For example, the court may argue that the Originator did not in fact intend to sell the receivables to the Purchaser. Rather, the Originator pledged the receivables in favour of the Purchaser or concluded a commission agreement delegating the collection of monies payable under the receivables to the Purchaser. In these examples, re-characterisation of assignment (as a “commission contract” or pledge) would entail the annulment of the “true sale” and the return of the receivables to the Originator.
In order to avoid the risk of such a court interpretation, we suggest that the legislature address and recognise the securitisation scheme in an explicit statutory provision. Legislative guidance on which market participants may rely would be an obvious incentive for the use of securitisation techniques on the Russian market.

**Bankruptcy Claw-back**

A reliable securitisation mechanism ensures that the bankruptcy of an Originator does not endanger a prior true sale of receivables to a Purchaser. Current Russian law, however, grants an external manager of an Originator involved in bankruptcy proceedings the ability to challenge the assignment of receivables to the Purchaser. In particular, the external manager may rely on the following provisions of Russian bankruptcy law:

- The external manager of the Originator (or, if the Originator is a bank, the head of the temporary administration) may refuse performance of the assignment agreement made by the Originator where either party has not performed (either in full or in part). Such refusal may be made if, in the external manager’s opinion, such assignment agreement prevents the recovery of the Originator’s solvency or if it would result in losses as compared to analogous transactions concluded under comparable circumstances.

- The external manager (or, if the Originator is a bank, the head of the temporary administration) may demand the invalidation of the assignment agreement in court under specific bankruptcy claw-back provisions. The court may set the assignment of the receivables aside if it is proven to have been concluded with an affiliate of the Originator and if its performance is causing loss or may potentially cause loss to the Originator (or its creditors). Therefore, in order to avoid claw-back of the assignment, it is critical under Russian law to ensure that the Purchaser cannot be qualified as an affiliate of the Originator. Further, the court may invalidate an agreement to assign receivables, entered into within the 6 months preceding the opening of the bankruptcy proceedings, if such assignment is proven to give preferential treatment to certain creditors.

- Where the Originator is a bank, the head of its temporary administration may also demand invalidation of the assignment agreement entered into within the three years preceding its appointment if: (a) the conditions of such agreement are worse for the Originator than those for analogous transactions and the parties thereto knew or should have known that the transaction may result in Originator’s insolvency; or (b) the agreement was concluded with parties which are controlled directly or indirectly by the Originator or which, in turn, control the Originator directly or indirectly or if the Originator and its counterparties are under common control.

- The external manager (or, if the Originator is a bank, the head of the temporary administration) may also challenge the validity of the assignment agreement based on general grounds provided for under Russian law. In practice, external managers and creditors commonly challenge sales of assets by a debtor arguing that the sale was at undervalue. In a number of cases Russian courts have ruled that the sale of assets at a discount (which will often be the case in securitisation transactions, whereby effectively, the discount reflects the interest element of the transaction and/or serves as a credit enhancement) qualifies as a gift. Since Russian law prohibits gifts in relations between commercial entities, the sales contracts in question were deemed void.
If a true sale is not recognised as such by a Russian court, the Originator gets the securitised receivables back, while the Purchaser is only entitled to claim damages or the purchase price as a third rank creditor. This would most likely then lead to an interruption of payments to Investors.

In establishing a legal framework for securitisation transactions, the legislature could consider setting restrictions on disputing assignments made in the context of securitisation and expressly permit the Originator’s sale of receivables at a discount. We also suggest that the legislature establish a presumption that securitisation transactions are deemed concluded on market conditions, and do not give any kind of preferences to specific creditors of the Originator, unless the external manager or head of the temporary administration proves to the contrary. Such provisions would ensure the robustness of the assignment of the receivables to the Purchaser in the event of the Originator’s insolvency.

**Notice to the Obligor**

An Originator’s assignment of receivables to a Purchaser will be enforceable without further formalities, such as disclosure to Obligors or obtaining Obligors’ consent. However, so long as an Obligor is not notified of the assignment, it may validly settle the receivables through payment to the Originator, while the Purchaser will only have a contractual claim to the sums paid by the Obligor to the Originator.

Under Russian law, the Originator’s cooperation may be essential for notifying Obligors of the assignment. Although legislative rules allow the Purchaser to notify the Obligor of the assignment independently, they do not specify what proof is sufficient to bind the Obligors to settle the receivables to the Purchaser. For reasons of confidentiality, it is not always possible for the Purchaser to present Obligors with “incontestable proof” such as an assignment contract. Consequently, the Purchaser may find it difficult in practice to make Obligors settle the receivables on its order without the Originator being involved. This issue needs to be addressed by the legislature.

It is also advisable that express statutory provisions resolve the issue of establishing priority between the claims of several competing assignees in order to adequately deal with situations in which the Originator assigns the same receivables several times to different Purchasers.

**The Purchaser (SPV)**

Current Russian law permits the onshore Purchaser to be established as a commercial company, the most common forms being joint stock companies and limited liability companies. Other options, which more aptly reflect the economic role of the Purchaser (such as a non-commercial entity or a pool of assets without a legal personality), cannot be used in Russia unless current legislation is amended. Further, the legislature would need to clearly define the regulatory requirements applicable to the Purchaser. In particular, it is important that the legislature expressly permit credit receivables to be assigned to and administered by non-banks.
Corporate Form

In a typical securitisation, the Purchaser is commonly a limited liability (or similar) company whose role is limited to issuing asset-backed securities and purchasing and holding the underlying assets. Often, the Purchaser is owned by a charitable trust, so as to ensure to the extent possible that none of the participants needs to consolidate the Purchaser on their balance sheets or can be deemed to be responsible for its obligations. The concept of a trust is not recognised by Russian legislation. It is thus important to determine which type of Russian company may be used as Purchaser, and who should own it. The securitisation legislation of other jurisdictions (e.g., France) demonstrates that possible options also include a “Purchaser” being established as a pool of assets without legal personality.

Non-commercial entities whose activities are not aimed at distributing profits among their participants most aptly reflect the economic role of a Purchaser. However, under the Investors Protection Law, non-commercial entities may issue bonds and similar securities only if permitted by federal statutes and other normative acts. Such acts should also provide for a security package ensuring repayment of sums owed under securities issued by a non-commercial entity. Therefore, if the legislature chooses to address the Purchaser as a non-commercial entity, a new form of non-commercial entity aimed at issuing asset-backed securities needs to be introduced into Russian legislation.

Alternatively, the legislature may choose to treat a Purchaser as a pool of assets without a legal personality. In this case, the legislature may structure the Purchaser in a fashion similar to that of investment funds (паевы инвеситионные фонды), i.e. pools of assets managed by management companies.

Licensing Requirements

Typically, securitisation is of interest to banks seeking to securitise consumer credit. Under Russian law, only licensed banks may grant credit (as opposed to a simple loan). It is under dispute whether a purchase made by a Purchaser and the servicing of credit receivables require a banking licence. In the past, Russian courts have invalidated the assignment of credit receivables to non-banks. Although courts have recently adopted a more liberal view on this issue, a regulatory regime applicable to the assignment of credit receivables is still exposed to legal uncertainty. We propose that the legislature expressly permit credit receivables to be assigned to and administered by non-banks.

Furthermore, currently the Russian Civil Code permits only banks, other credit organisations or other commercial organisations licensed to perform such activities to be factors in factoring agreements. This raises the following problems.

The Law on Licensing does not list the activities of a factor among the activities that are subject to licensing. No Russian government agency licenses factors, and to our knowledge, no such licenses exist in Russia despite the Civil Code requirement.

Russian courts, however, do not believe that the lack of existence of the licenses in question negates the necessity of complying with the Civil Code’s requirement. Russian courts have ruled that the absence in the Law on Licensing of provisions that require licensing of a factor’s activities does not exclude the direct application of the licensing requirement of the Civil Code. Therefore, the courts have strongly suggested that a valid

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11 See the Annex to this Position Paper.


Russian law factoring agreement may not have as the purchaser an entity without a factor’s license (other than a bank or another credit organisation).

The rigid approach taken by Russian courts excludes the possibility of receivables transfer by way of factoring in cases where the Purchaser is not a bank or another credit organisation. This serves to negate the many other advantages that factoring arrangements under Russian Law may offer for securitisation purposes. It is also not clear how the respective licensing requirements should be interpreted in respect of foreign banks and investment institutions. To this end we suggest that the licensing requirements applicable to factors be eliminated.

**Purchaser’s Bankruptcy Remoteness**

The Purchaser needs to be incorporated as an insolvency remote entity. With respect to a Purchaser established in Russia, insolvency remoteness cannot be achieved unless current legislation is amended. In particular, the legislature might (i) limit the Purchaser’s ability to engage in any activities other than those necessary for securitisation-related transactions, (ii) expressly restrict the Purchaser’s right to announce its voluntarily liquidation or reorganisation until securitisation transactions undertaken by the Purchaser are completed; (iii) recognise non-petition and limited recourse covenants of parties contracting with the Purchaser.

Investors need to be satisfied that the Purchaser will be reasonably protected from forced (insolvency) or voluntary liquidation. This may be achieved in different ways. Where the Purchaser does not enjoy bankruptcy remote status by law, the parties usually aim to create such a status by limiting the Purchaser’s capacity in its statutes, and by introducing non-petition and limited recourse covenants into the relevant documentation. With respect to a Purchaser established in Russia these criteria could not be satisfied unless current legislation is amended.

**Limitation of Capacity**

It is crucial to limit the Purchaser’s activities to those necessary for securitisation-related transactions, as well as to restrict the Purchaser’s ability to incur indebtedness. The purpose of such limitations is to decrease the likelihood that there will be other creditors seeking recovery from the Purchaser’s assets and that the Purchaser will go bankrupt as a result of its unrelated business activities. Under the Russian Civil Code, a breach of the restrictions on a Purchaser’s activities set forth in its constituent documents would not render related transactions void but would rather make them challengeable under limited circumstances. Therefore, limiting a Purchaser's capacity via its constituent documents would not suffice to prevent it from performing unrelated business. Limitations instead need to be set by law.

**Prohibition of Liquidation and Reorganisation**

In order to ensure the Purchaser’s bankruptcy remoteness, the Purchaser should be subject to a prohibition of voluntary liquidation and reorganisation. Provisions to this effect set out in the Purchaser’s constituent documents or contracts would be in conflict with Russian law. In particular, under the Russian Civil Code a company’s rights may only be limited by law. Further, a waiver of rights does not terminate such rights except for instances provided by law. In order to reassure securitisation participants, we suggest that the legislature expressly restrict the Purchaser’s right to announce its voluntarily liq-
uidation or reorganisation until securitisation transactions undertaken by the Purchaser are completed.

Non-petition and Limited Recourse Covenants

Russian law tends to approach negative covenants very cautiously. As mentioned above, the Russian Civil Code does not permit the limitation or waiver of one’s rights except for instances provided by law. Consequently, at present a contractual covenant made by securitisation participants not to file a bankruptcy petition against the Purchaser until securitisation is completed and to limit their recourse to the Purchaser’s assets is unenforceable. We suggest therefore that non-petition and limited recourse covenants of securitisation participants be recognised by an express statutory provision.

We understand that a non-petition covenant may be open to criticism as violating constitutional rights to seek judicial protection. However, such a covenant typically represents the participants’ consent to postpone rather than to waive their right to open bankruptcy proceedings against the Purchaser. We believe that the law should permit parties contracting with the Purchaser to make such choices in the context of securitisation.

Credit Enhancement, Tranching and Hedging

Current Russian law does not support credit enhancement arrangements, which are typically used in securitisation transactions. In order to remove obstacles for the use of securitisation techniques in Russia, the legislature might (i) supplement existing legislation with credit enhancement mechanisms, such as bank account pledges or escrow/blocked accounts, (ii) permit insurance of risks relating to defaults of receivables, (iii) permit tranching of asset-backed securities aimed at protecting the more “senior” tranche investors against losses, and (iv) expressly grant judicial protection to hedging contracts made in the context of securitisation.

In a typical securitisation transaction the Originator is required to provide a credit enhancement to support securitised receivables. The Purchaser, in its turn, is required to enter into hedging transactions if necessary to offset imbalances in inflows and outflows of cash, in order to minimise the risks resulting from those imbalances for Investors. Also, asset-backed securities are often issued in tranches reflecting different levels of seniority, to grant additional protection to those Investors which hold the more senior tranches. Current Russian law would impede the use of these arrangements, which are typically used in international business practice.

Credit Enhancement Structures

Typically, the Originator will be required to provide a credit enhancement to support securitised receivables. The credit enhancement will be used to offset defaults of the receivables. It could be posted in the form of a pledge of a bank account, or of securities or similar marketable assets, or by insuring the risks relating to defaults of receivables. It could also be provided by the Originator assigning its rights under a credit insurance, or in the form of a “deferred purchase price”, i.e., by the Purchaser retaining a portion of the agreed purchase price until the assigned receivables have been fully collected. There are doubts as to the extent to which current Russian law supports these structures as is shown by the following examples:
Pledge of bank accounts

Historically, market participants have attempted to effect pledges with respect to bank accounts either through a pledge of funds standing to the credit of a bank account or through a pledge of rights under a bank account. Russian courts, however, consistently resist these attempts.

The Russian Civil Code defines a pledge as a way of securing an obligation whereby a creditor may satisfy its claims out of the value of pledged property in the event of the debtor’s default. The pledge is enforced through the sale of the pledged property. Based on the definition of a pledge, Russian courts have adopted a clear-cut view that moneys standing to the credit of a bank account are not eligible for sale and thus, may not be pledged. Furthermore, Russian courts believe that rights under bank accounts are non-assignable except for the right to demand the return of an account balance upon the closing of the account and thus, are not eligible for pledging. In addition, under the Russian Civil Code, the accountholder’s right to freely dispose of funds deposited in its bank account cannot be restricted unless expressly authorised by law.

Permission to use bank accounts for security purposes would require a complex review and reform of Russian law provisions on pledges, enforcement procedures, banking activities, etc. The reform would obviously result in legal impediments and technical difficulties and would be subject to extensive debate in Russian legal circles. However, the introduction to Russian law of bank account pledges, which is viewed as an efficient and simple security mechanism in most jurisdictions, would be a step forward to creating a favourable and stable environment for financial activities in Russia.

No escrow accounts

In essence, the escrow account mechanism allows the blocking of funds deposited in a bank account until such time as certain events (agreed by the parties) have occurred. Russian law, however, does not tolerate such a limitation of accountholders’ rights. As noted above, under the Russian Civil Code, an accountholder’s right to control and dispose of funds deposited at its bank account at its sole discretion cannot be restricted unless expressly authorised by law. The accountholder may terminate the bank account agreement at any time. Further, under the current general principles of civil and banking law certain general instructions given to the bank by an accountholder (including instructions to block an account) are revocable and may be cancelled at any time.

We propose that the legislature permit accountholders to make binding and irrevocable choices by agreement with secured creditors. To this end, Russian civil and banking legislation needs to be supplemented with provisions on bank accounts subject to security regimes. Further, to avoid conflicts between this new concept and existing legislation, civil, banking and bankruptcy law rules need to be amended accordingly. In particular, the legislature should focus on the bank’s role in servicing accounts subject to security regimes, settlements under such accounts, enforcement procedures and the priority of secured creditors on an accountholder’s insolvency.

In the context of securitisation, bank account pledges and escrow mechanisms may be used not only as credit enhancement, but also to mitigate commingling risk (see page 31 below).
Insurance
Protection of investors may also be achieved by insuring the risks arising from defaults of receivables. The Russian Civil Code, however, does not permit securitisation participants to insure the risk of liability for breaching a contract unless expressly authorised by law. The Russian Civil Code needs to be amended so that insurance could be used as an effective tool of credit enhancement.

Tranching Asset-backed Securities
Tranching asset-backed securities is a common and efficient way to protect investors in the more “senior” tranches against losses. In substance, junior creditors subordinate to senior creditors in exchange for higher interest rates. In essence, tranching is a form of credit enhancement. Current Russian law, however, poses the following obstacles for the use of this scheme:

- Securities of different tranches may bear different rights. However, claims of all creditors holding securities of different tranches will be ranked equally. It is therefore necessary to make a statutory provision such that the subordination of securities tranches is enforceable on the Issuer's bankruptcy.
- Asset-backed securities are, in most cases, bonds (i.e. marketable securities granting to their holder the right to receive a fixed sum of money at a given future date, and bearing interest at a certain rate). The Civil Code defines a bond as a security evidencing the right of its holder to demand, on the due date, repayment of principal and interest under the bond. A strict reading of this definition suggests that repayment under the bond must be unconditional. Since payment under junior tranche bonds would always be conditional upon payment under senior tranche bonds, this scheme may be viewed as contradicting the Civil Code.

Therefore, a carve-out from the definition of a bond may be required to make the issuance of a bond in different tranches possible. Alternatively, given that current regulation of corporate bonds does not make them a particularly attractive instrument for securitisation purposes, the legislature might supplement securities legislation with provisions on a new registrable instrument (e.g. a certificate) supporting the status of asset-backed securities eligible for tranching.

To summarise, amendments to existing civil, securities and bankruptcy legislation are a pre-requisite to issuance of securities in different tranches for the purposes of Russian securitisation transactions.

Hedging Arrangements
It is important that Purchasers hedge their risks (if any) relating to adverse movements in currency exchange or interest rates. Such risks can result from imbalances between the Purchaser’s inflows and outflows of cash. Enforceability of such hedging arrangements under Russian law is exposed to legal uncertainty. If a hedging arrangement is qualified as a wagering contract, it will not be subject to judicial protection under Russian law.

The qualification of contracts as wagering contracts has been widely discussed by courts in relation to non-deliverable forward foreign exchange transactions. Russian courts have adopted a view that such forward contracts are only enforceable if it is proved that they were entered into for specific commercial purposes (e.g. to hedge the...
underlying exposure to a particular economic risk) rather than for gaming purposes. Although the above approach of Russian courts on the face of it supports the enforceability of hedging contracts to be concluded by a Purchaser, the courts may well reach a contrary decision in a given case.

In setting a legal framework for securitisation in Russia, the legislature has to specifically address hedging contracts made in the context of securitisation as transactions for elimination of economic risks and which are subject to judicial protection. This would also be in line with the recent ruling of the Constitutional Court considering the constitutionality of the Civil Code provision which deprives wagering contracts of judicial protection. The Constitutional Court noted that federal legislation does not set forth clear criteria for qualifying a contract as a wagering contract, and consequently, it is at the courts' discretion when deciding whether a particular contract is subject to judicial protection. While recognizing the rule as valid per se, the Constitutional Court called on the legislature to set out guarantees for participants in the Russian financial markets. In our opinion, this may only be achieved if a clear delimitation between business contracts subject to judicial protection and wagering contracts is made by statutory provisions.

**Ongoing Servicing by the Originator; Mitigation of Commingling Risk**

The Originator should be able to continue “servicing” the receivables and transfer the relevant proceeds to the Purchaser. In Russia, a fiduciary management structure may enable the Originator to act as the Servicer. It is suggested that the legislature should (i) expressly permit the fiduciary management of receivables and (ii) emphasise that proceeds generated by the receivables should be segregated from the Originator’s own property and be immediately disbursed to the Purchaser so that a commingling risk is excluded.

**Originator Acting as Servicer**

In receivables securitisations, the Originator often continues to act as the Servicer of assigned receivables, i.e. collects monies due under the securitised receivables, manages day-to-day relationships with Obligors, and enforces the receivables through the courts. This makes it possible to ensure the collection of receivables without disclosing to the Obligors that the receivables were securitised. Although under current Russian law this structure may not be implemented as it is in other jurisdictions, a similar result may be achieved through the fiduciary management structure. Pursuant to this structure, the Originator assigns receivables to the Purchaser who in turn transfers the receivables to the Originator based on a fiduciary management contract. The Originator will then be entitled to manage the receivables in its own name though indicating that it is acting in the capacity of a fiduciary manager. It is noteworthy that similar mechanisms are currently in operation in Russia by investment funds (paevye investitsionnye fondy).

The Russian Civil Code, however, does not list receivables as being among property eligible for fiduciary management. Therefore, doubts are being voiced as to whether the Russian Civil Code permits the fiduciary management of receivables. In order to reassure securitisation participants, it is suggested that the legislature should expressly permit the fiduciary management of receivables.
Mitigation of Commingling Risk

Commingling risk—i.e. the risk that cash proceeds from securitised receivables are commingled with other assets of the Originator acting as Servicer, and subsequently become part of the Originator's bankruptcy estate—is one of the key risks to be addressed in most securitisation transactions. If the Originator has a high capital market rating of its own, the commingling risk will not be critical. Otherwise, this risk can be mitigated by ensuring that the proceeds from securitised receivables are immediately allocated to the receivables, and immediately disbursed to the Purchaser.

Often however, the Originator is not able to allocate inflows of cash to its accounts receivable at the necessary speed. In this case, a pledge of the bank account at which proceeds from securitised receivables arrive, or the establishment of an escrow/block account structure, could be used to mitigate the commingling risk. We refer to our discussion of these arrangements on page 28 above, and their current limitations under Russian law.

If the Servicer is acting in the capacity of a fiduciary manager, this problem is partly solved by Russian law, which requires a fiduciary manager to segregate monies due to a Purchaser from the manager’s own property. However, it is advisable that the legislature emphasises that monies collected by the Servicer under no circumstances form a part of the Servicer’s bankruptcy estate and must be immediately surrendered to the Purchaser upon opening of bankruptcy (liquidation) proceedings against such Servicer.

Asset-Backed Securities

Current law permits the Purchaser to issue asset-backed securities in the form of corporate bonds, which are not a particularly attractive instrument for securitisation participants. The legislature might revise the existing regulations in order to create an effective instrument supporting the status of an asset-backed security.

Current legislation permits the Purchaser to issue asset-backed securities in the form of corporate bonds. However, given that a company issuing corporate bonds is subject to various restrictions imposed by securities and corporate legislation, such bonds cannot serve as an effective instrument for securitisation purposes. The legislature might therefore supplement securities legislation with provisions on a new registrable instrument (e.g. a certificate) supporting the status of asset-backed securities. Consideration should also be given to the possibility of issuing non-registrable bonds where they are placed with a restricted number of professional investors. Other issues that need to be resolved in order to create an instrument which can be effectively used for securitisation purposes include, among others, the type of collateral that can back such instruments (other than mortgages and securities), corporate law limitations on the issuance of such asset-backed instruments, disclosure (prospectus) issues, the role of financial consultants, default and enforcement procedure, and depository issues.
Data Protection and Banking Secrecy

Absence of clear guidance on handling information subject to banking secrecy and data protection rules may complicate transfer of receivables to the Purchaser. Current laws on the confidentiality of data need to be revised and detailed so as to set out clear requirements for the transfer of Obligor-related data.

The assignment of receivables to the Purchaser would normally involve a transfer of relevant data on the Obligors. If such data are qualified as confidential, their transfer may lead to an infringement of the Obligors’ rights. In the first place, data protection rules are of the utmost importance for the assignment of consumer loans by banks which are bound to observe strict confidentiality. Non-banks, however, may also face obstacles in transferring Obligor-related data to the Purchaser. Problems could arise due to a lack of consistent and systematic legislative guidance on the handling of confidential data.

Current legislation refers to different types of confidential data, including commercial secrets, banking secrets, tax secrets, personal data, etc., but fails to set forth legal regimes applicable to each type of confidential data. Lack of clarity with respect to the protection of data is a serious obstacle for transfer by the Originator of Obligor-related data to the Purchaser. For example, under the Law on Information\(^\text{14}\), companies and individuals may be held liable for a breach of rules aimed at protecting personal data, i.e. information on facts, conditions and circumstances of a person’s life which allow the person to be identified. Due to this rather vague definition of “personal data” and the lack of explicit rules on its protection, transfer by the Originator of Obligor-related data to the Purchaser is open to contestation based on the breach of confidentiality rules. Current laws on the confidentiality of data therefore need to be revised and detailed so as to reassure securitisation participants in Russia. It should be noted that the legislature has already begun to take measures to systematise the law on confidential information with the enactment in July 2004 of the Law on Commercial Secrets\(^\text{15}\). This provides the basic rules for handling confidential data.

It may be expected that waiver of Originator’s secrecy duty will become a part of commercial and credit contracts under which receivables are generated. However, this would only resolve the secrecy issue with respect to contracts to be concluded in the future, while the securitisation of receivables under existing contracts would still pose practical difficulties. Possibly, the use of a data protection trustee (as common in some European jurisdictions) which will disclose the identity of Obligors to the Purchaser only upon the occurrence of certain events, could help address this issue.

Another serious obstacle for servicing the receivables by an Originator may arise as the result of the current relative absence in Russia of agencies for the collection of data on borrowers’ credit history (credit bureaus). The credit report industry usually plays a very important role in securitisations because the data collected and kept by credit bureaus enables the Originator to better control the risks and improve the quality of assets while selecting and servicing the receivables.

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The cost of funding in securitisations is greatly affected by overall payment history, degree of Obligor concentration and overall credit quality of the assets in the portfolio, being securitised. The establishment of a viable legal framework for the functioning of credit bureau in Russia is important to make prospective securitisations cost-effective. The Law on Credit Histories\textsuperscript{16} of December 2004 is a first step in creating such framework.

**Currency Regulation and Control**

Russian currency control regulations may present a significant impediment to securitisation transactions in Russia. It is essential that currency control measures should not lead to excessive increases in the costs of securitisation transactions.

The following comments apply both to cross-border transactions and domestic transactions having a foreign currency element, such as transactions using an SPV incorporated outside Russia, securitising foreign exchange denominated receivables or purchase of Russian asset-backed securities by foreign investors.

Historically, Russian currency control regulations have made market participants, both onshore and offshore, subject to various currency control constraints. Consequently, a common proposal has been that securitisation schemes could be effected in Russia with fully licensed banks acting as Originators and Servicers, with Purchasers and investors outside of Russia so that the regulatory burden on securitisation participants is decreased. This would obviously reduce the number of Originators having access to securitisation techniques, and decrease their potential for acting in the Russian market.

The new Law on Currency Regulation\textsuperscript{17} came into force in June 2004. The new law is generally aimed at the gradual liberalisation of Russian currency control regulations. In particular, it abolishes the requirement for Russian residents to obtain transaction-specific Central Bank permits and instead introduces other forms of regulation (such as the formation of mandatory reserves and the use of special accounts). The new law will also loosen restrictions on the purchase of foreign currency and opening of accounts outside Russia by Russian residents.

However, the new law entitles the currency control authorities, at any time, to impose reserve requirements on numerous currency operations which may be concluded under securitisation transactions. Although such restrictions will not adversely affect the conclusion of securitisation transactions, they may involve cost increases for the participants, and hence reduce the commercial attractiveness of such transactions. For example, reserve requirements may be applied to the following operations:

- Purchase by foreign Investors of bonds issued by a Russian SPV in Russia (domestic securities): the Investor may be required to deposit, for a period of one year, up to 20\% of the transaction amount in a non-interest bearing account opened with an authorised bank;
- Purchase by Russian Investors of securities issued by a foreign SPV (foreign securities): the Investor or the foreign seller may be required to deposit for a period of up to one year up to 20\% of the transaction amount, or up to 100\% of the transaction amount for a period of up to 60 days, in a non-interest bearing account opened with


The law prohibits the acquisition of such foreign securities until expiry of the reserve period, and this may substantially restrict access of Russian investors to securities issued by a foreign SPV;

- Non-resident granting a foreign currency loan to a Russian SPV: the SPV may be required to deposit up to 20% of the transaction amount, for a period of up to one year, in a non-interest bearing account opened with an authorised bank;

- Purchase by a Russian SPV of foreign currency on the Russian market to make payments to foreign Investors: the SPV may be required to deposit up to 100% of the transaction amount, for a period of up to 60 days prior to the completion date of the currency transaction, in a non-interest bearing account opened with an authorised bank.

The law currently provides for repeal of these restrictive measures from 1 January 2007. However, it would be expedient to ensure as soon as possible that these currency regulations do not lead to excessive cost increases in securitisation transactions, nor to a reduction in the numbers of participants in such transactions.

**Tax Implications**

Securitisation schemes are feasible if they are effected in a tax-neutral way. Under Russian law securitisation participants will be subject to profit tax, VAT, and securities issuance tax. The legislature might consider decreasing the tax burden on securitisation participants.

The Russian Tax Code tends to be a self-contained document with sets of its own definitions of many concepts which do not necessarily have the same meaning as those in civil law. Our further analysis is based on definitions and tax treatments available in the current version of the Tax Code. The following taxes and tax areas should be reviewed in order to determine whether they might trigger such a burden in the context of a securitisation.

**Sale of Assets**

For tax purposes assets including receivables are treated as property or property rights. There is no concept in tax legislation of “future assets”, i.e. where services/goods have not yet been provided or interest has not accrued in accordance with contractual terms. This may lead to many negative consequences from re-characterization of income to appearance of income imputed by authorities for tax purposes.

**Profit Tax**

Any positive difference between the balance sheet and sales value of an asset would be taxed at a rate of 24%. Because “future assets” are not recognized as existing property there is the risk that amounts paid for such assets will be taxed in the gross amount of the value of such assets received by Originator. Deductibility and the moment of recognition of loss where assets are sold below their balance sheet value depends on many factors, e.g. on the maturity of the assets. The sale of assets will in many cases lead to acceleration of tax liabilities although this depends on the taxation method (accrual or cash) selected by the Originator (and in some structures by the SPV) for the operations from which these assets resulted.
Under current law it might also be difficult to ensure that the structure will provide effective tax relief for bad debts arising in connection with the receivables, and for provisions for bad loans in banking.

Under Russian law a 24% profit tax is charged on the excess spread retained by a Purchaser, i.e. the amount by which interest paid on receivables exceeds interest owed on securities. The rate of tax payable may be reduced to 20% if securitisation is made through an offshore Purchaser that has no “permanent establishment” in Russia for tax purposes. However, such reduction is difficult to achieve, as the involvement of a Russian Servicer may already qualify as a “permanent establishment” of an offshore Purchaser.

The Russian Tax Code entitles the tax authorities to control the pricing practices of affiliated parties for profit tax purposes. If the tax authorities establish that a transaction price deviates by more than 20% from the “market price”, taxes and penalties payable by the parties will be adjusted accordingly. This rule may affect transactions between a Purchaser and an Originator who might be considered affiliated parties under Russian tax law. Furthermore, it may be assumed that the assignment of assets to a Purchaser or Issuer in a sum greater than the sum of funds secured by such assets (as a security enhancement in securitisation structures) will unequivocally lead to application of the transfer pricing rules.

Interest is deductible for profits tax purposes provided that the interest rate does not deviate significantly (by more than 20%) from the average level of rates on debts issued in the same Position Papering period on comparable conditions, and does not exceed the Central Bank’s refinancing rate multiplied by 1.1 for debts in roubles and 15% for debts in foreign currency. These rules may trigger additional tax costs for securitisation structures, as interest on senior subordinated tranches may significantly deviate from junior ones.

The Tax Code contains provisions permitting the deductions of costs associated with financial instruments used for hedging, although there are very unclear rules on how these provisions are to be applied, and burdensome requirements to prove the purpose of the instrument. It is also unclear whether a credit derivative used for credit enhancement, or income swaps for liquidity enhancement, would be treated as (a) financial instrument and (b) acceptable for hedging for tax purposes.

Profit distributions from the SPV are subject to 6% withholding tax where the recipient is a Russian resident, and 15% where this is not the case.

VAT

Receivables purchased by a Purchaser may be classified as those which include VAT and those which are not subject to VAT. Russian tax legislation in respect of VAT taxation of an assignment of receivables by an Originator to an SPV is not entirely clear. Most likely for VAT purposes the sale of assets should be treated also as sale of property rights, realisation of which in Russia is subject to VAT.

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18 I.e. “place of business” used to regularly carry out business activities in Russia.
The Russian Tax Code does not provide special rules for determination of the VAT base on the sale of receivables, except those which include VAT charges. There is a certain ambiguity about whether receivables from VAT-exempt services, and other receivables (e.g. interest), should be subject to VAT on its nominal value when assigned to a third party.

There are also other VAT issues which have to be clarified, primarily whether the Originator’s (or a third party’s) activity as Servicer or any other services (obtaining a rating, underwriting etc) would be considered activities subject to VAT (even if the services are rendered without charge), and the timing of any VAT charges/payments. VAT treatment should be carefully observed when deciding on the type of profit (“excess interest”) repatriation from the SPV to the Originator, on movement of assets between the Originator and a Purchaser, or utilizing a credit/liquidity enhancement and hedges with third parties.

Overall, in common structures, it is likely that while the Originator will suffer from VAT because of timing mismatches in recognition of VAT inflows/ outflows, the SPV will incur additional costs from mismatches in absolute amounts of VAT paid/received.

Securities Issuance Tax
Issuance of securities by an onshore Purchaser is subject to a 0.2% tax in accordance with a recent amendment of the legislation.

Conclusion
Although tax legislation contains most of the major concepts applicable to securitisation, it would be prudent for the legislature to refine some provisions, especially the following:

- the sale of assets might be treated for tax purposes as a pure financing transaction for the Originator and the SPV and therefore will not have any effects to the commercial flows and related assets with subsequent tax neutrality from a VAT and profits tax perspective,
- the concept of a tax transparent financing entity (an SPV) may be introduced,
- interest deductibility rules may be changed to relax treatment in cases where formally connected parties (i.e. parties which are connected only on formal grounds) are involved, and
- some changes may have to be made in the financial instruments part of the Tax Code.

Consumer Loans
The legislature might facilitate securitisation of consumer loans by amending current consumer protection legislation.

Consumer loans are one of the most commonly used types of collateral for asset-backed securities. Consumer protection legislation in Russia may complicate securitisation of consumer loans. In particular, under existing legislation, the Originator must reimburse a consumer for fees paid in connection with disbursement of a loan when a sale and purchase agreement is terminated due because the products sold are defective. This issue needs to be addressed by parliament.
For purposes of illustration please find a brief abstract of securitisation laws enacted in Italy, Spain, France, Greece and Portugal, and of recent amendments to the relevant Polish laws. This abstract does not purport to be a complete analysis of the respective securitisation laws.

**Italy**

The Italian Law Nr. 130 dated 4 April 1999 is designed to facilitate securitisation transactions in Italy. The Law allows for the securitisation of receivables through thinly capitalised special purpose companies (SPVs) incorporated in Italy. The Law creates an exception to the general rule that an Italian company may only issue debt up to the amount of its nominal capital. Also, interest payments to holders of asset-backed securities, which are not resident in Italy are (under certain conditions) exempt from withholding tax. The SPVs’ shareholders and directors are subject to certain integrity requirements, similar to those of banks. SPVs are subject to supervision by the Bank of Italy and are required to submit certain information on their securitisation transactions to the Bank of Italy.

SPVs may not engage in any business other than securitisation transactions. In the insolvency of the SPV the securitised assets are ring-fenced for the benefit of the holders of asset-backed securities (and, if applicable, a trustee, a liquidity provider or a swap counter—party, as well as a credit enhancer).
The Law also provides that an assignment of receivables to an SPV may be perfected by publication in the Italian official gazette, rather than by notification of each individual debtor (as would normally be the case). Any security or other collateral attached to the receivable will be automatically transferred with the assignment. As a result, the transfer of a mortgage does not require a filing with the land registry, which would otherwise trigger a court fee.

Spain

The three laws which form the legal environment for securitisation in Spain are: the Royal Decree 926/1998 dated 14 May 1998 (the Royal Decree), which regulates asset securitisation funds and securitisation fund management companies; Law 19/1992 regarding the regulation of real estate companies and investment funds and of mortgage securitisation funds; the Spanish Finance Act (the Finance Act) promulgated by Law 44/2002 on 22 November 2002; and the New Insolvency Act, which was approved by the Spanish central parliament on 9 July 2003 to come into force on 1 September 2004.

The Royal Decree defines securitisation funds as separate estates without legal personality made up (as regards their assets) of financial assets and other rights, and (as regards their liabilities) of debt securities and loans granted to them by credit institutions. Securitisation funds must obtain at least 50% of their funding by issuing debt instruments. In addition, securitisation funds may raise subordinated funding from institutional investors. According to the Royal Decree, both existing and future receivables may be securitised. The Royal Decree specifically mentions the right of a concessionaire to motorway toll collections and other analogous rights to be determined by Orders of the Ministry of Economics and Finance.

The Royal Decree requires that (in principle) Originators must have available audited accounts for at least the most recent three financial years, and must file their annual accounts with the Securities Market Commission. Originators must include certain information in their annual accounts on the assignment of future receivables. Generally (unless the parties agree otherwise) the Originator retains the administration and collection of the securitised receivables. Originators must assign their receivables unconditionally and without recourse.

The Royal Decree distinguishes between Closed Funds (whose assets and liabilities may, generally, not be modified except in specific circumstances) and Open Funds (through which, for instance, revolving assets can be securitised).

The Securities Market Commission supervises compliance with the provisions of the Royal Decree. The Securities Market Commission may request audits of securitisation funds and their assets. There is a general rating requirement for securitisation funds. Management companies of securitisation funds are subject to a number of special regulations regarding their purpose, authorisation and activities.
The Finance Act created a new type of debt security (so-called “territorial bonds”) that may be issued by credit institutions in order to refinance receivables against public-sector borrowers. These receivables are ring-fenced in favour of the holders of the territorial bonds. The Finance Act also exempts receivables from public-sector entities from certain bankruptcy voidance rules.

The New Insolvency Act creates a new insolvency regime for Spain. Amongst other provisions, it will abolish the severe claw back risk currently associated with bankruptcy.

France

In France, the legal grounds for securitisation transactions (“titrisations”) were established as early as the beginning of 1988.

The securitisation of receivables occurs through so-called “Fonds communs de créances” (FCCs), which are funds without legal personality. An FCC is represented and managed by a management company. The FCC issues units, which in turn, represent a claim for payment of the proceeds from the FCC’s assets in favour of the holder of the unit.

An FCC may acquire receivables from different Originators. Either the Originator or a credit institution may act as Servicer. Since 1998, FCCs may not only securitise the receivables of credit institutions, but also of other types of Originators. Future receivables, as well as defaulted receivables, may be the subject of a securitisation, although there are restrictions on eligible investors for these.

Being pools of assets without legal personality, FCCs cannot become subject to insolvency proceedings. The insolvency of any other participant in a securitisation transaction is dealt with in accordance with the general principles of French insolvency law.

Under an amendment of the FCC law in 1999, it was clarified that the creation of umbrella FCCs comprising several distinct compartments with separate assets and liabilities, and limited recourse between each other, is possible.

The *loi de sécurité financière* n°2003-706 of 1 August 2003 (the Financial Security Law) ranks among the major improvements of the FCC legal framework. Amongst others, the Financial Security Law entitles FCCs to issue debt instruments (in addition to co-ownership units). This allows the foregoing of the two-tier structures previously used by market participants in order to be able to purchase debt securities typically issued by offshore special purpose vehicles, which in turn held the units in the FCC. The Financial Security Law also increases protection of FCCs against commingling risk by allowing the FCC’s management company and the receivables’ Servicer to agree that funds collected on behalf of the FCC will be credited to a bank account dedicated to the FCC and beyond the reach of the Servicer’s creditors. Finally, under a future decree, FCCs will be granted more flexibility to enter into derivatives, allowing them to act as credit protection sellers and as Issuers in synthetic CDO transactions.

The Financial Security Law also specifies that the assignment of a receivable entails the transfer of security interests, guarantees and other ancillary rights attached to the receivable. The transfer is enforceable against third parties without any further formalities.
Portugal


The Securitisation Law provides for two types of special purpose vehicle, namely securitisation funds [Fundos de Titularização—FTCs] and securitisation companies [Sociedades de Titularização—STCs]. These are the only entities that can purchase receivables and issue securities under the Securitisation Law.

FTCs are collective investment funds and can be closed or open-ended. Only limited liability companies incorporated in Portugal may be managers of FTCs. They are subject to a number of regulatory requirements.

An STC must be a limited liability company. The law stipulates certain minimum capital requirements for STCs, limits their capacity to enter into certain transactions, imposes various registration and authorization requirements (implemented by the Securities Commission), and states that STCs may only engage in the business of securitisation.

The Securitisation Law defines securitisable assets as receivables that derive from a contractual or other legal relationship. Furthermore, the Securitisation Law requires that receivables must be of pecuniary nature, freely assignable and unconditional. A receivable which is to be securitised may not be encumbered, pledged or seized. Receivables can only be sold if they arise from an existing or predictable legal or contractual relationship.

In principal, under the Securitisation Law, an assignment will only be effective against the debtor upon notification. However, if the Originator is a bank, a financial company, an insurance company, a pension fund or a pension fund manager, the assignment of a receivable does not require any acknowledgement or acceptance by, or notification of the debtor.

Pursuant to Law 103/2003 the State and other public entities may securitise tax receivables, social security receivables as well as court fees and legal fees owed to the state. The law contains detailed rules on the assignment and servicing of such receivables. Furthermore, the new law allows for the securitisation of overdue receivables, conditional or disputed receivables, and receivables under litigation. Also, the new law admits assets other than receivables to securitisation, such as bonds. The Securities Commission is given the authority to add new types of securitisable assets by promulgating additional implementing rules. Finally, the new law also eases rules on the use of proceeds of securities assets, and allows for appointment of a common representative of bondholders.

The Securitisation Tax Law establishes a special tax regime for STCs that are incorporated under the Securitisation Law. Notably, interest paid by FTCs and STCs to investors resident outside Portugal will be exempt from withholding tax, and certain payments associated with FTCs and STCs are exempt from stamp duty.
Greece

In 2003 the Greek government enacted Law L3156/2003, which facilitates asset-backed securitisation in Greece. The Greek law introduces the concept of a special purpose securitisation vehicle (SPV), which must be a Greek company with registered shares. The SPV’s exclusive purpose is to acquire receivables under the law, to issue debt and to enter into insurance and hedging contracts (including derivative contracts) for the purposes of securitisation. It is however not mandatory to use a Greek SPV in order to securitise a Greek Originator’s assets.

Notes offered by a Greek SPV may only be offered in a private placement, to not more than 150 persons.

The receivables, which may constitute claims against any third party including consumers, may be existing and/or future receivables, as long as they are identifiable (even if they are conditional). Certain rights that are accessory to the receivables, such as guarantees, mortgages and pledges, may also be transferred. Ancillary rights to the receivables, contractual rights, rights of set-off or even certain rights to procedural preferential treatment may also be transferred.

The law introduces new formalities as to how to validly perfect an assignment. Firstly, unless the parties agree otherwise, the transfer contract must be registered in a specifically created public register (the Registration) for the receivables to be transferred. Secondly, the SPV or the Originator must notify the debtors about the transfer, although notification is deemed to have occurred with the Registration. Furthermore, on registration, all registrable and registered security interests accessory to the receivables, such as mortgages, can be transferred to the SPV. Registering the transfer contract gives rise to a statutory security interest over the receivables and the monies standing to the credit of the collection accounts. The statutory security interest arises in favour of the noteholders and other secured creditors, such as swap counter-parties, a liquidity provider or a monoline insurer. The claims of such creditors rank ahead of any statutory preferential creditors set out in article 976 of the Greek Civil Procedure Code, including tax authorities. After registration, the receivables cannot be validly encumbered until the security taken for the securitisation is released.

The Originator, a credit institution that operates in the European Economic Area or any third party (if it has guaranteed the receivables or had already been servicing them prior to the transfer) may act as Servicer, provided that the servicing agreement is executed in writing and appropriately registered. The Servicer must promptly deposit all collections in a separate interest bearing account and a mandatory note on the account ledgers must state that the monies standing to the credit of the account do not constitute property of the Servicer or account bank.

Furthermore, the law provides for exemptions from banking confidentiality and data protection laws to allow for the receivables to be transferred free of any requirements to obtain the consent of the debtors or the Data Protection Authority. The duty of confidentiality is disapplied in the context of the relationship between the Originator and the SPV and in the context of the relationship between the SPV and its creditors, but not with respect to any other third parties.
Poland

On 1 May 2004 (the date of Poland’s accession to the European Union) an amendment to the Banking Law came into force. It sets out the conditions under which banks may carry out securitisation of receivables. In particular, an organisation which issues asset-backed securities is not to undertake any other kind of business apart from the purchase of receivables and issue of securities backed by such receivables, and associated matters. A bank acting as Originator is not to bear any risk whatsoever in relation to securities issued by the Purchaser, and may repurchase receivables sold to the Purchaser only in compliance with severe restrictions.

An amendment has also been made to the Investment Fund Law, and it introduces the concept of special “securitisation funds” as a new type of investment fund. “Special securitisation funds” buy receivables from an Originator or acquire the rights to receive the economic benefits from receivables without purchasing them.

Further, Poland is now considering a securitisation bill, which would fully regulate securitisation matters. At present the bill is still at an early discussion stage in the Sejm (Poland’s Lower House).
## ANNEX II: Actions to be Taken to Create a Favourable Environment for Securitisation Transactions in Russia

<table>
<thead>
<tr>
<th><strong>ISSUE</strong></th>
<th><strong>ACTION</strong></th>
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<tbody>
<tr>
<td>The scope of receivables eligible for securitisation is narrow</td>
<td>Chapter 24 of the Civil Code should be amended to expressly permit the assignment of receivables that are identifiable rather than which already have been identified.</td>
</tr>
<tr>
<td>Russian courts are reluctant to recognise the assignment of pools of receivables.</td>
<td>Chapter 24 of the Civil Code should be amended to expressly permit assignment of future receivables, including where Obligors have open claims against an Originator.</td>
</tr>
<tr>
<td>Russian courts do not recognise the validity of assignments made in violation of anti-assignment clauses in contracts with an Obligor.</td>
<td>Chapter 24 of the Civil Code should be amended to expressly permit the assignment of receivables despite a contractual prohibition against assignment.</td>
</tr>
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## Annex II: Actions to be Taken to Create a Favourable Environment for Securitisation Transactions in Russia

<table>
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<tr>
<td><strong>True sale of receivables cannot be guaranteed</strong></td>
<td>The Securitisation Law should clearly describe a securitisation scheme.</td>
</tr>
<tr>
<td>The risk of the re-characterisation of a true sale of receivables cannot be excluded under current legislation.</td>
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<tr>
<td>Current legislation allows for a true sale to be set aside in the Originator's bankruptcy.</td>
<td>The Securitisation Law should include a rule stating that a securitisation transaction is presumed to be concluded on market conditions and giving no preferential treatment to certain creditors of the Originator unless an external manager/the head of a temporary administration proves otherwise.</td>
</tr>
<tr>
<td><strong>The status of the Purchaser is not clear</strong></td>
<td></td>
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<tr>
<td>Current legislation does not prescribe which form of legal entity can be used to establish the Purchaser.</td>
<td>The Securitisation Law should define which form of legal entity (e.g., commercial entities) may be used to establish the Purchaser.</td>
</tr>
</tbody>
</table>
| Current legislation does not guarantee the Purchaser’s bankruptcy remoteness. | The Securitisation Law should:  
  ■ limit the Purchaser’s capacity;  
  ■ restrict the Purchaser’s right to announce voluntarily liquidation or reorganisation until its securitisation transactions are completed; and  
  ■ recognise non-petition and limited recourse covenants of parties contracting with the Purchaser. |
| Russian courts are reluctant to allow the transfer of receivables by way of factoring in cases where the Purchaser is not a credit organization. | A provision making a factor’s activities subject to licensing should be excluded from Article 825 of the Civil Code. |
| **Traditional credit enhancement mechanisms are not available**       |                                                                        |
| Pledges of bank accounts and escrow/blocked accounts are not available under Russian law. | Russian law is to be supplemented with mechanisms enabling the use of bank accounts as security for the performance of obligations. A working group developing legislation on the pledging of bank accounts is to discuss the reform options. |
## Annex II: Actions to be Taken to Create a Favourable Environment for Securitisation Transactions in Russia

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<tr>
<td>Current Russian law does not allow securitisation participants to insure the risks arising from defaults of receivables.</td>
<td>The provision limiting the possibility of insuring the risk of liability for breaching a contract to cases expressly authorised by law should be excluded from Article 932(1) of the Civil Code.</td>
</tr>
<tr>
<td>Russian law does not allow to rank creditors’ claims in accordance with tranches in which they invest.</td>
<td>The bankruptcy legislation should be amended so that the tranching of asset-backed securities is respected in the Purchaser’s bankruptcy.</td>
</tr>
<tr>
<td>Russian courts tend to qualify hedging arrangements as wagering contracts, thus depriving them of judicial protection.</td>
<td>Russian law should expressly recognize the enforceability of hedging arrangements. A working group developing derivatives legislation is to discuss the reform options.</td>
</tr>
</tbody>
</table>
| A commingling risk cannot be avoided                                  | • Chapter 53 of the Civil Code should be amended to permit the fiduciary management of receivables.  
• The Securitisation Law should provide mechanisms (such as special-purpose accounts) ensuring that monies collected by the Servicer are immediately allocated to the receivables and immediately disbursed to the Purchaser. |
| Current legislation does not guarantee the Purchaser’s bankruptcy remoteness. | The Securitisation Law should:  
• limit the Purchaser’s capacity;  
• restrict the Purchaser’s right to announce voluntarily liquidation or reorganisation until its securitisation transactions are completed; and  
• recognise non-petition and limited recourse covenants of parties contracting with the Purchaser. |
<p>| Russian courts are reluctant to allow the transfer of receivables by way of factoring in cases where the Purchaser is not a credit organization. | A provision making a factor’s activities subject to licensing should be excluded from Article 825 of the Civil Code. |</p>
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<tr>
<td>An adequate form of asset-backed securities is not available</td>
<td>- The Securitisation Law should provide for an instrument that can be used for securitisation purposes, and list assets (other than immovable and securities) that may be used to back such instruments.</td>
</tr>
<tr>
<td>The types of securities that are available under existing legislation cannot be used effectively for securitisation purposes.</td>
<td>- The Joint Stock Companies Law, the Limited Liability Law and the Securities Law should be amended to remove cumbersome restrictions imposed on companies issuing bonds.</td>
</tr>
<tr>
<td></td>
<td>- The Law on Pledges should be amended to permit pledges of receivables to secure performance under asset backed securities.</td>
</tr>
<tr>
<td>Transfer of Obligor-related data is open to contestation</td>
<td>- The Securitisation Law should provide a mechanism for transferring Obligor-related data to the Purchaser.</td>
</tr>
<tr>
<td>The requirements of Russian currency law may cause additional costs for the participants in securitisation transactions.</td>
<td>- A framework for the effective functioning of credit bureaus in Russia needs to be established.</td>
</tr>
<tr>
<td>Russian currency regulation may reduce the economic attraction of securitisation transactions</td>
<td>- Currency control measures must not cause excessive increase in the costs of securitisation transactions.</td>
</tr>
<tr>
<td>The Purchaser cannot be established as a tax-neutral entity; assignment of assets to an SPV has adverse tax implications for the Originator</td>
<td>- The Tax Code should be amended as follows:</td>
</tr>
<tr>
<td>Tax legislation does not allow securitisation to be effected in a tax-neutral way.</td>
<td>- sale of assets might be treated for tax purposes as a pure financing transaction for the Originator and SPV and therefore will not have any effects on the commercial flows and related assets, with subsequent tax neutrality from VAT and profits tax perspectives; and</td>
</tr>
<tr>
<td></td>
<td>- the concept of tax transparent financing entity may be introduced.</td>
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<tr>
<td>There is a risk of formal application of the transfer pricing rules for taxation purposes</td>
<td>The formal application of transfer pricing rules may lead to failure of tax-neutrality.</td>
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<tr>
<td>The Tax Code's provisions on interest deductibility rules must be amended to relax treatment in cases where nominally connected parties are involved.</td>
<td></td>
</tr>
<tr>
<td>There is a risk of interpretation because of the uncertainty in tax law provisions concerning the use of financial instruments for hedging</td>
<td>That part of the Tax Code regulating the use of financial instruments must be amended.</td>
</tr>
<tr>
<td>Securitisation of consumer loans is open to uncertainty</td>
<td>A working group developing consumer loans legislation is to discuss the reform options.</td>
</tr>
<tr>
<td>Consumer protection legislation in Russia may complicate the securitisation of consumer loans.</td>
<td></td>
</tr>
</tbody>
</table>
ANNEX III: Securitisation Glossary

[In a Russian version of the Position Paper only]
ANNEX IV: List of Members of the Working Group’s “executive committee”

- Alex Bertolotti (PricewaterhouseCoopers)
- Vladimir Dragunov (Baker & McKenzie)
- Max Gutbrod (B & M)
- Alison Harwood (International Finance Corporation)
- Igor Iassenovets (Standard & Poor's)
- Alexander Ivanchenko (Finamatics (UK) LLP)
- Oleg Ivanov (State Duma)
- Friedrich Jergitsch (Freshfields Bruckhaus Deringer)
- Olga Khokhlova (Freshfields Bruckhaus Deringer)
- Maya Melnikas (White & Case)
- Olga Okouneva (White & Case)
- Anton Selivanovsky (Finamatics (UK) LLP)
- Ivan Strougatski (Standard & Poor's)
- Simon Vine (OAO Alfa-Bank)