

# Securitisation Summit 2013: Major issues .. Do we have a resolution?

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This document is based on the discussions that took  
place at the Securitisation Summit 2013





# Tax issues

- Taxability of excess spread
  - Taxable if the excess spread represents beneficial interest
  - Clearly yes, if it is a part of junior investment
  - Can be avoided by appropriate amendment of the trust deed
- Is the income of the trust taxable or the entire inflows?
  - Clearly the tax is on income
- Rules for the new tax provisions awaited
  - The definition of “special purpose vehicle” involves particulars to be prescribed
  - The particulars are yet to be prescribed
    - We will need to wait for the Rules

# Tax issues -2

- Does the AOP issue, raised by some of the past assessments, still remain?
  - In view of the clear non-obstante language of sec 115TA, does not seem likely
- Is the new law applicable to transactions outside RBI fold, and those that opt not to be listed?
  - Unlikely
- Is there is a way out from sec 14A disallowance?
  - We may dare to litigate, but chances are rare
- If there a way to do reinvestment type transactions?
  - Seems yes

# So, how does the market move now?

- As some presenters mentioned, priority sector needs may have to be met by way of direct assignments
- Non priority investments have to come by of securitisation

# So how to make direct assignments work?

- Key problems in direct assignment
  - Duplication of due diligence
    - Point may be taken to the RBI
    - Can due diligence be done by third party
  - Volatility of cashflows
    - Smoothing of cashflows by independent servicers may be tried
  - Default risk
    - Needs to be properly computed and priced
    - Pricing models may be framed

# Will priority sector treatment apply to debt securities of the SPV

- Positives of the argument
  - The RBI guidelines have consistently used the word “debt securities”
  - So if securitisation transactions done under RBI guidelines have qualified for priority sector all this while, no reason why not
- Negatives of the argument
  - A debt of the SPV is exposure on the SPV, not exposure on the underlying assets
    - Answer to this: the very concept of SPVs is that SPVs are nothing but bunch of assets



# Legal issues

- Does the concept of contributory trusts apply to India?
  - All trusts are contributory
  - To the extent a beneficiary puts in money, he is a settlor.
- Can an SPV issue bonds:
  - Without doubt yes, however, the question of priority sector treatment still needs to be tested
- Can there be non-SPV structures
  - Yes



# Mark to market valuation

- How are ABS investments to be marked to market?
  - ABS investments may be listed
    - That is the easiest way to get securities valued
  - If not listed, mark to model valuations clearly exist
  - The MTM valuations are done based on spreads to yield curve, incorporating base case prepayment and default risk





# Re-set of credit enhancements

- Typically, securitisation transactions start with a particular level of enhancement, which automatically increases as the pool amortises
  - Once it reaches a particular level, the enhancements are allowed to be proportionally reduced
- Discretionary resetting is never done
  - It is based on formula and triggers
- If enhancement has come in form of over-collateralisation or subordination, it is amortisable
  - However, should typically aim at a step up

# Need for Innovative Structures to be explored

- There is a need for alternative structures to be explored apart from the existing structures
  - Bond type structures
    - Only bonds
    - Combination of bonds and PTCs
    - Only PTCs
    - PO and IO strips
    - Time tranches
  - Revolving structures
    - Are they permitted
- Is covered bonds a suitable alternative to securitisation?
  - Regulators to consider covered bonds for meeting priority sector needs



# Standardisation of documents

- Considering the issues with regard to documentation not being consistent with the substance of the transaction the industry feels the need for standardisation of the documents
  - ISDA type definitions may be used, leaving the market participants to make their deviations



# Other issues

- Stamp duty on assignment
  - State wise stamp duty applicable, this needs to be streamlined
    - Only solution lies in law-making
- Clarity on Minimum Holding Period requirements in case of bullet loans
  - Suggestions were that month on books (MoB) would be a better definition than MHP to define the seasoning requirement in the books of the originator
    - Bullet loans with principal and interest upon maturity cannot be securitised
- Addressing need of securitisation for low income housing
- Transactions to happen on on-going basis instead of last quarter transaction clog



# Change of servicer

- Some people recommended back up servicer
  - Particularly in case of MFI securitisations
  - Some transactions are operationally married to the originator:
    - They cannot be inherently separated
    - In such cases, having backup servicer does not effectively resolve anything
- If servicing can be easily migrated, the focus should be on arms-length servicing agreement