

# TABLE OF CONTENTS

Acknowledgment .....	iii
Biographies .....	v

## CHAPTER 1

### Regulatory Update: March 2025

§ 1.01	Corporate Transparency Act.....	1-1
§ 1.02	SEC Rule 192 (Conflict of Interest Rule)....	1-3
§ 1.03	FDIC Custodial Deposit Account Rule .....	1-4

## CHAPTER 2

### Bankruptcy Issues in Securitizations

§ 2.01	Overview.....	2-2
§ 2.02	Understanding Bankruptcy Risk.....	2-4
§ 2.03	Legal Forms and Structure.....	2-8
§ 2.04	Fiduciary Duties of Directors.....	2-10
§ 2.05	Recovery of Transferred Assets for the Benefit of the Transferor’s Creditors.....	2-13
[1]	Substantive Consolidation .....	2-13
[a]	Judicial Tests .....	2-14
[b]	Risks in the Securitization Context.....	2-18
[2]	“True Sale” Analysis .....	2-20
[a]	Right of Recourse Against Transferor.....	2-21
[b]	Extinguishment of Debt Upon Payment by Other Source .....	2-23
[c]	Benefits of Ownership .....	2-23
[d]	Expressed Intention of the Parties.....	2-24
[e]	Discharge of Debt.....	2-26

**SECURITIZATIONS**

	[f] Post-Transfer Control Over Assets by Transferor . . . . .	2-26
	[3] Fraudulent Conveyance . . . . .	2-27
	[4] Success of the “Bankruptcy Remote” Safeguards. . . . .	2-28
§ 2.06	Consumer Bankruptcy Cases . . . . .	2-30
§ 2.07	Conclusion. . . . .	2-31

**CHAPTER 3****Application of Securities Law  
to Securitization Transactions**

§ 3.01	The Securities Act of 1933 . . . . .	3-2
	[1] Comprehensive Regulation . . . . .	3-2
	[2] Definition of Security . . . . .	3-3
	[3] The Definition of Issue . . . . .	3-6
	[a] Section 2(4) . . . . .	3-6
	[b] Co-Issuers . . . . .	3-7
	[c] Rent-a-Shelf Transactions . . . . .	3-9
	[d] Issuer Liability. . . . .	3-10
	[4] Integration of Asset-Backed Offerings. . . . .	3-11
	[5] Relevant Exemptions from Registration. . . . .	3-14
	[a] Section 3(a)(2). . . . .	3-14
	[b] Section 3(a)(3) . . . . .	3-15
	[c] Section 3(a)(8) . . . . .	3-16
	[6] Registration. . . . .	3-17
	[a] Eligibility to Use Form SF-3 . . . . .	3-18
	[b] Disclosure . . . . .	3-20
	[7] Use of Informational and Computational Material . . . . .	3-23
	[8] Prospectus Delivery . . . . .	3-25
	[a] Rule 424(b) . . . . .	3-25
	[b] Free Writing Prospectuses. . . . .	3-26
	[c] Rule 415 . . . . .	3-27
	[i] 10(a)(3) Prospectus . . . . .	3-27
	[ii] Amendments to Reflect Fundamental Changes. . . . .	3-27
	[iii] Material Changes in Plan of Distribution . . . . .	3-28
	[iv] Liability. . . . .	3-29
	[v] Unsold Securities . . . . .	3-29
	[9] Interpretation of Various SEC Rules in the Context of Delayed Offerings . . . . .	3-30
	[a] Rules 138 and 139a. . . . .	3-30

## TABLE OF CONTENTS

xxix

	[b] Rule 144 . . . . .	3-30
	[c] The Trust Indenture Act of 1939. . . . .	3-31
[10]	Dodd-Frank Act and Related SEC Rulemaking. . . . .	3-32
	[a] Dodd-Frank Act. . . . .	3-32
	[b] 2011 SEC Rulemaking under Dodd-Frank Act. . . . .	3-32
	[c] 2014 SEC Rulemaking under Dodd-Frank Act. . . . .	3-34
§ 3.02	Securities Exchange Act of 1934. . . . .	3-36
	[1] Periodic Reporting . . . . .	3-36
	[2] Suspension of Periodic Reporting Obligation . . . . .	3-36
	[3] Historical Approach of SEC to Periodic Reporting. . . . .	3-37
	[4] Comprehensive Regulation . . . . .	3-38
	[5] Rulemaking under Dodd-Frank Act . . . . .	3-40
§ 3.03	Investment Company Act of 1940. . . . .	3-41
	[1] Definition of Security . . . . .	3-41
	[2] Rule 3a-7 . . . . .	3-41
	[a] Definition of Eligible Assets. . . . .	3-42
	[b] Permissible Classes of Securities. . . . .	3-43
	[c] Restrictions on Active Management. . . . .	3-44

## CHAPTER 4

### Federal Income Tax Aspects of Asset-Backed Securities

§ 4.01	Introduction . . . . .	4-2
	[1] Catalog of Securities . . . . .	4-2
	[2] Avoidance of Entity-Level Tax . . . . .	4-3
	[3] Uses of Securities—Summary. . . . .	4-5
§ 4.02	Pass-Through Certificates . . . . .	4-10
	[1] General Description . . . . .	4-10
	[2] Stripped Pass-Through Certificates. . . . .	4-11
	[3] Senior/Subordinated Pass-Through Certificates . . . . .	4-13
	[4] Callable Pass-Through Certificates. . . . .	4-14
	[5] LEGOs (Strips and Combinations at the Holder's Option) . . . . .	4-14
	[6] Single Loan CMBS . . . . .	4-16
§ 4.03	Pay-Through Bonds . . . . .	4-19
	[1] Economic Features. . . . .	4-23

## SECURITIZATIONS

	[2] Tax Features . . . . .	4-25
	[3] GAAP Treatment . . . . .	4-26
§ 4.04	REMICs. . . . .	4-29
	[1] Description and Overview of Tax Issues . . . . .	4-31
§ 4.05	Offshore Issuers . . . . .	4-36
	[1] General Description of CDOs. . . . .	4-36
	[2] Credit Default Swaps and Synthetic CDOs. . . . .	4-39
	[3] Catastrophe Bonds . . . . .	4-42
§ 4.06	Asset-Backed Debt Other than Pay- Through Bonds . . . . .	4-43
	[1] Net Interest Margin Securities (NIMS). . .	4-43
	[2] Asset-Backed Commercial Paper and SIVs. . . . .	4-44
	[a] Description. . . . .	4-44
	[b] Tax Issues . . . . .	4-46
	[3] Covered Bonds. . . . .	4-47
	[4] Stranded Cost Securitizations . . . . .	4-48
§ 4.07	Synthetic Variable Rate Tax-Exempt Bonds. . .	4-50
§ 4.08	Credit Risk Transfer Securities . . . . .	4-52
§ 4.09	Securities Backed by Distressed Receivables. . .	4-53
§ 4.10	Structured Securities . . . . .	4-54

## CHAPTER 5

## Securitizations and the Uniform Commercial Code

§ 5.01	The Structure of the UCC . . . . .	5-2
§ 5.02	New Categories and Characterization of Property Subject to Article 9 . . . . .	5-5
	[1] Deposit Accounts . . . . .	5-5
	[2] Investment Property . . . . .	5-6
	[3] Promissory Notes . . . . .	5-7
	[4] Payment Intangibles. . . . .	5-8
	[5] Letter-of-Credit Rights. . . . .	5-8
	[6] Health-Care-Insurance Receivables. . . . .	5-10
	[7] Personal Property Interests Secured by Interests in Real Property. . . . .	5-11
	[8] Secured Interests Granted by a State or Other Governmental Unit. . . . .	5-11
	[9] Redefining “Accounts” . . . . .	5-12
§ 5.03	Creation of a Security Interest. . . . .	5-14
	[1] Creation of a Security Interest by the Sale of an Asset . . . . .	5-14

**TABLE OF CONTENTS**

xxxi

	[a]	Article 9 and the <i>Octagon Gas</i> Holding. . . . .	5-15
	[b]	“True Sales” and Revised Article 9. . . . .	5-16
	[2]	Creation of a Security Interest by Contract. . . . .	5-17
	[a]	Description of Collateral. . . . .	5-17
	[b]	Automatic Attachment of a Security Interest in a “Supporting Obligation” . . . . .	5-18
	[c]	Attachment of a Security Interest in Investment Securities . . . . .	5-18
§ 5.04		Perfection and Priority of a Security Interest. . . . .	5-19
	[1]	Law Governing the Perfection, Effect of Perfection or Nonperfection and Priority of a Security Interest . . . . .	5-19
	[a]	Perfection of a Nonpossessory Security Interests . . . . .	5-20
	[b]	The Perfection, Effects of Perfection or Nonperfection and Priority of a Possessory Security Interest. . . . .	5-20
	[c]	The Effect of Perfection or Nonperfection and the Priority of a Nonpossessory Security Interest . . . . .	5-21
	[d]	Exceptions to the General Governing Law Rules . . . . .	5-21
		[i] Deposit Accounts . . . . .	5-21
		[ii] Letter-of-Credit Rights . . . . .	5-22
		[iii] Investment Property . . . . .	5-22
	[e]	Perfection of Security Interests Involving Foreign (Non-U.S.) Parties. . . . .	5-23
	[2]	Methods of Perfection and Priority of a Security Interest Under Article 9. . . . .	5-24
	[a]	Perfection by Attachment . . . . .	5-24
	[b]	Perfection by Control . . . . .	5-25
		[i] Deposit Accounts . . . . .	5-25
		[ii] Letter-of-Credit Rights . . . . .	5-26
		[iii] Investment Property . . . . .	5-27
§ 5.05		Revised Assignability Provisions and Securizations. . . . .	5-29
§ 5.06		Transition Issues. . . . .	5-31

**SECURITIZATIONS**

§ 5.07	2010 Amendments . . . . .	5-37
	[1] Individual Debtor Name on a Financing Statement . . . . .	5-37
	[2] Registered Organization . . . . .	5-38
	[3] After-Acquired Property . . . . .	5-38
	[4] Transition Provisions . . . . .	5-39

**CHAPTER 6****Securitization Accounting  
Under FASB 140**

§ 6.01	Introduction . . . . .	6-2
§ 6.02	Determining if a Securitization Meets the Sale Criteria . . . . .	6-4
	[1] Securitization Accounted for as Sales . . . . .	6-4
	[a] Sale Criteria . . . . .	6-4
	[b] Failure to Comply With Sale Criteria . . . . .	6-8
	[2] Put and Call Options . . . . .	6-8
	[3] Knowing the ROAPs . . . . .	6-10
	[4] Off-Balance Sheet Warehouse Funding Arrangements . . . . .	6-10
	[5] Whole Loan and Participating Interests . . . . .	6-12
	[6] Legal Opinions . . . . .	6-12
	[7] Tax Implications for Securitizations . . . . .	6-17
§ 6.03	Determining Gain or Loss on Sales . . . . .	6-19
	[1] Simplified Gain or Loss Calculation . . . . .	6-19
	[2] Calculating Gain or Loss in a Revolving Structure . . . . .	6-19
	[3] A Gain on Sale Calculation Template . . . . .	6-21
	[4] A Revolving Credit Card Securitization Calculation Example . . . . .	6-22
	[5] Sales of Participating Interests . . . . .	6-24
	[6] Fair Value . . . . .	6-25
	[7] Recording Retained Credit Risk . . . . .	6-26
§ 6.04	Investor Accounting: Prepayment and/or Credit Risk . . . . .	6-27
	[1] In General . . . . .	6-27
	[2] Determining Periodic Interest Income . . . . .	6-28

## TABLE OF CONTENTS

xxxiii

[3]	Determining Whether an Impairment Charge is Required . . . . .	6-29
[4]	Example Illustrating Interest Recognition and Impairment Recognition for Securities with Significant Prepayment and/or Credit Risk . . . . .	6-29
[5]	How to Account for Investments in Beneficial Interests Issued in the Form of Equity . . . . .	6-31
[6]	Recognition of Credit Loss . . . . .	6-32
	[a] Recognition of Expected Credit Losses . . . . .	6-32
	[b] Measurement of Expected Credit Losses . . . . .	6-32
§ 6.05	Financial Accounting Standards Board Disclosure Requirements . . . . .	6-33
	[1] In General . . . . .	6-33
	[2] Securitizations as Sales . . . . .	6-33
§ 6.06	Securitization Accounting Under IFRS . . . . .	6-40

## CHAPTER 7

### Data Center Securitizations

§ 7.01	Introduction and Overview . . . . .	7-2
	[1] Growth of Data Center Industry . . . . .	7-2
§ 7.02	Structure . . . . .	7-3
	[1] Master Trust Structure . . . . .	7-3
	[a] Additional Notes . . . . .	7-3
	[b] Additional Data Centers . . . . .	7-3
	[c] Disposition of Data Centers . . . . .	7-3
	[2] Assignment of Assets . . . . .	7-4
	[3] Debt Bonds Issued Through an Indenture . . . . .	7-4
	[4] Issuance of Variable Funding Notes . . . . .	7-4
	[5] Amortization . . . . .	7-4
	[6] Cash Sweep . . . . .	7-5
§ 7.03	Parties . . . . .	7-6
	[1] Parent, Guarantor (depositor) and Issuer . . . . .	7-6
	[2] Asset Entities . . . . .	7-6
	[3] Manager . . . . .	7-6
	[a] Duties and Responsibilities . . . . .	7-6
	[b] Standard of Care . . . . .	7-7
	[c] Manager Advances . . . . .	7-7

## SECURITIZATIONS

	[4] Servicer . . . . .	7-7
	[5] Indenture Trustee . . . . .	7-8
§ 7.04	Asset Types . . . . .	7-9
§ 7.05	Key Structural and Data Center Specific Features . . . . .	7-10
	[1] Priority Reserve Account . . . . .	7-10
	[2] Early Termination Fee Reserve . . . . .	7-10
	[3] Cash Trap Reserve . . . . .	7-10
	[4] Executed Forward Starting Lease Reserve . . . . .	7-10
	[5] Capital Expenditure Reserve . . . . .	7-10
	[6] Liquidity Reserve . . . . .	7-11
	[7] Letters of Credit . . . . .	7-11
	[8] Annualized Adjusted Base Rent . . . . .	7-11
	[9] Prepayment Consideration . . . . .	7-11
§ 7.06	Underlying Collateral . . . . .	7-12
	[1] Pledges of Personal Property . . . . .	7-12
	[2] Leases and Rents . . . . .	7-12
	[3] Key Components of Lease Review . . . . .	7-12
	[a] Eviction Proceedings and Other Remedies . . . . .	7-12
	[4] Mortgages and Types of Mortgage Instruments . . . . .	7-13
	[5] Foreclosure . . . . .	7-13
	[6] Special Real Estate Provisions . . . . .	7-14
	[a] Title Policies . . . . .	7-14
	[b] Environmental . . . . .	7-14
	[c] Appraisals . . . . .	7-14
§ 7.07	Conclusion . . . . .	7-15

## CHAPTER 8

## Commercial Mortgage Loan Securitization

Section I The Development of Commercial  
Mortgage Loan Securitizations

§ 8.01	Introduction to Section I . . . . .	8-3
§ 8.02	Background . . . . .	8-4
	[1] Pioneering Steps . . . . .	8-4
	[2] The Guaranteed Deals . . . . .	8-4
	[3] The Non-Guaranteed Deals . . . . .	8-5
	[4] The Resolution Trust Corporation . . . . .	8-6
	[5] The First Post-RTC Private Deal . . . . .	8-9
	[6] The Early Conduits . . . . .	8-11
	[7] Modern Conduits . . . . .	8-12



**TABLE OF CONTENTS**

xxxv

§ 8.03	The Regulatory Matters and Structural Basics .....	8-15
	[1] Regulatory Issues .....	8-15
	[2] Structural Issues .....	8-18
§ 8.04	Single Property Deals .....	8-21
§ 8.05	Multiple Property Deals .....	8-22
§ 8.06	Special Accounting Concerns .....	8-23
§ 8.07	Special Issues .....	8-25
§ 8.08	Conclusion to Section I .....	8-28
<b>Section II    Complex Loan Structures in CMBS                   and CRE CDO Transactions</b>		
§ 8.09	Introduction to Section II .....	8-29
§ 8.10	Typical Debt and Capital Stack/Typical Loan Structures .....	8-30
	[1] Whole Mortgage Loan .....	8-30
	[a] Special Purpose Vehicle Borrower...	8-30
	[b] Independent Director/Manager/ Member .....	8-31
	[c] Guarantor .....	8-31
	[2] A/B-Note Structure .....	8-32
	[a] A-Note .....	8-32
	[b] B-Note .....	8-32
	[c] A/B-Note Participation Interests...	8-33
	[3] Rake Bond .....	8-34
	[4] <i>Pari Passu</i> vs. Senior/Sub .....	8-35
	[a] <i>Pari Passu</i> .....	8-35
	[b] A/B and <i>Pari Passu</i> Note Structures .....	8-36
	[5] Mezzanine Loans .....	8-37
	[a] Single Mezzanine Loan .....	8-37
	[b] Multiple Mezzanine Loans .....	8-37
	[c] Mezzanine Lender Rights .....	8-38
	[d] Mezzanine Loan Participation Interests .....	8-39
	[e] Mezzanine Loan with Preferred Equity .....	8-40
§ 8.11	CMBS and CRE CDO Structures .....	8-42
	[1] CMBS .....	8-43
	[a] Advantages for Borrowers .....	8-43
	[b] Parties Involved in a Typical CMBS Offering .....	8-43
	[i] Underwriter/Placement Agent .....	8-43
	[ii] Rating Agencies .....	8-43
	[iii] Trustee .....	8-44

**SECURITIZATIONS**

	[iv] Primary Servicer . . . . .	8-44
	[v] Master Servicer . . . . .	8-44
	[vi] Special Servicer . . . . .	8-44
	[c] How It Works . . . . .	8-45
[2]	CRE CDO . . . . .	8-46
	[a] Advantages for Issuers . . . . .	8-46
	[b] Special Issues . . . . .	8-46
	[c] How It Works . . . . .	8-47
	Appendix 1: Typical SPV Covenants . . . . .	8-48
	Appendix 2: Typical Non-Recourse Carveouts . . . . .	8-52

**CHAPTER 9****Collateralized Loan Obligations**

§ 9.01	Introduction . . . . .	9-4
	[1] Basic Structure . . . . .	9-4
	[2] Background . . . . .	9-6
	[3] Organization of This Chapter . . . . .	9-8
§ 9.02	Cash Flow CDOs and Market Value CDOs . . . . .	9-10
	[1] Historic Structures: Cash Flow CDO vs. Market Value CDO . . . . .	9-10
	[a] Cash Flow . . . . .	9-10
	[b] Market Value . . . . .	9-11
	[2] Today's CLOs . . . . .	9-12
§ 9.03	Types of CLOs . . . . .	9-13
	[1] Arbitrage Cash Flow CLOs . . . . .	9-13
	[2] Balance Sheet CLOs . . . . .	9-14
	[3] Investors in CLOs . . . . .	9-15
§ 9.04	Structure . . . . .	9-16
	[1] Introduction . . . . .	9-16
	[2] A Typical CLO Transaction . . . . .	9-19
	[a] Expected Lifecycle of a Cash Flow CLO . . . . .	9-19
	[i] Ramp-Up Period . . . . .	9-19
	[ii] Reinvestment Period . . . . .	9-20
	[iii] Non-Call Period . . . . .	9-21
	[iv] Restricted Trading Periods . . . . .	9-21
	[v] Post-Reinvestment Period Investment . . . . .	9-22
	[b] Coverage Tests in Cash Flow Transactions . . . . .	9-22
	[i] Overcollateralization Tests . . . . .	9-23
	[ii] Interest Coverage or Interest Diversion Test . . . . .	9-23

**TABLE OF CONTENTS**

xxxvii

	[c]	Collateral Quality Tests in Cash Flow Transactions.....	9-24
	[d]	Concentration Limitations in Cash Flow Transactions.....	9-24
	[e]	Waterfall (Priority of Payments) in Cash Flow Transactions.....	9-24
	[f]	Management Fees: Senior Management Fee, Subordinated Management Fee, Incentive Fee in Cash Flow Transactions.....	9-26
	[g]	Trading Strategy in Cash Flow Transactions .....	9-26
	[3]	Parties .....	9-27
	[a]	Arranger; Placement Agent; Initial Purchaser .....	9-27
	[b]	Collateral Manager.....	9-27
	[c]	Indenture Trustee .....	9-28
	[d]	Share Trustee .....	9-28
	[e]	Rating Agencies .....	9-28
	[4]	Credit Enhancement.....	9-29
	[5]	Hedging .....	9-30
§ 9.05		Common CLO Features .....	9-31
	[1]	Redemption Features .....	9-31
	[2]	Trade vs. Settlement Date Accounting ...	9-32
	[3]	Note Cancellation.....	9-33
	[4]	Amend to Extend.....	9-33
	[5]	Discretion in Investing Post-Reinvestment Period .....	9-34
	[a]	Discount Obligations .....	9-34
	[b]	Typical Reinvestment Profile .....	9-34
	[6]	Flexibility in OC Tests.....	9-35
	[a]	Equity Cures by Contributions .....	9-35
	[b]	Trading Plans .....	9-35
	[7]	Workouts and Restructurings.....	9-36
	[a]	Response to Acosta and Serta Restructurings .....	9-36
	[b]	Uptier and Asset Priming Transactions .....	9-37
§ 9.06		Legal Issues Involved in Structuring CLO Transactions.....	9-38
	[1]	Securities Act of 1933.....	9-38
	[2]	Investment Company Act of 1940 .....	9-39
	[a]	Section 3(c)(7) .....	9-40
	[b]	Section 3(c)(1) .....	9-41

## SECURITIZATIONS

	[c]	Rule 3a-7.....	9-41
	[d]	Section 7(d).....	9-42
	[e]	Volcker Rule Implications.....	9-42
	[f]	Other Exemptions.....	9-42
[3]		Bankruptcy and Insolvency Issues.....	9-42
	[a]	True Sales and Non-Consolidation...	9-43
	[b]	Non-Petition Covenants and Bankruptcy Subordination Agreements.....	9-43
[4]		Regulatory Changes.....	9-45
	[a]	Volcker Rule.....	9-45
		[i] Loan Securitization Exclusion.....	9-46
		[ii] Definition of Ownership Interests.....	9-46
	[b]	Risk Retention.....	9-48
		[i] U.S. Risk Retention.....	9-48
		[ii] European Union and United Kingdom Risk Retention...	9-50
		[iii] Japanese Risk Retention.....	9-55
	[c]	Rating Agency Rules.....	9-57
		[i] Rule 17g-5.....	9-57
		[ii] Third Party Due Diligence, Rule 15Ga-2 and Rule 17g-10.....	9-57
		[iii] Rule 17g-7 and Presale Reports.....	9-58
	[d]	CPO/CTA Issues.....	9-58
	[e]	Investment Advisers Act.....	9-60
	[f]	EU/UK Restricted Lists.....	9-60
	[g]	SEC Rules.....	9-60
		[i] Marketing Rule.....	9-60
		[ii] Proposed Revisions to Custody Rule.....	9-62
		[iii] Securitization Conflicts of Interest Proposal.....	9-63
[5]		Internal Revenue Code Section 457A...	9-66
[6]		Validity and Perfection of Security Interest in the Collateral.....	9-67
	[a]	Loans.....	9-67
	[b]	Location of the Debtor.....	9-68
[7]		Legal Issues Relating to the Assignment of and Participation in Loans.....	9-68
[8]		Tax Issues.....	9-70
	[a]	Entity Level Tax.....	9-70
	[b]	FATCA.....	9-71

**TABLE OF CONTENTS**

xxxix

	[9] ERISA Issues . . . . .	9-72
	[10] Co-Issuer. . . . .	9-72
§ 9.07	LIBOR Transition . . . . .	9-74
	[1] Benchmark Rates Transition . . . . .	9-74
	[2] Transition from LIBOR in Legacy CLOs . . . . .	9-75

**CHAPTER 10**

**[RESERVED]**

**CHAPTER 11**

**Credit Card Securitization**

§ 11.01	Introduction . . . . .	11-4
	[1] Definition . . . . .	11-4
	[2] Why Securitize Credit Card Receivables? . . . . .	11-4
	[3] Evolution of Securitization Objectives . . . . .	11-5
§ 11.02	The Collateral: Credit Card Receivables . . . . .	11-6
	[1] Credit Cards . . . . .	11-6
	[2] Accounts vs. Receivables . . . . .	11-7
	[a] Accounts . . . . .	11-7
	[b] Receivables . . . . .	11-7
	[i] Principal Receivables . . . . .	11-8
	[ii] Finance Charge Receivables . . . . .	11-8
	[iii] Recoveries . . . . .	11-8
	[iv] Interchange . . . . .	11-8
	[3] Account Eligibility and Addition/ Removal of Accounts . . . . .	11-8
	[a] Account and Receivable Eligibility Requirements . . . . .	11-8
	[b] Account Addition or Removal . . . . .	11-8
	[4] Other Assets . . . . .	11-9
§ 11.03	Performance Variables . . . . .	11-10
	[1] Yield . . . . .	11-10
	[2] Excess Spread . . . . .	11-10
	[3] Payment Rate . . . . .	11-10
	[4] Losses . . . . .	11-10
	[5] Delinquencies . . . . .	11-11
	[6] Dilution . . . . .	11-11

## SECURITIZATIONS

§ 11.04	Securitization Roles . . . . .	11-12
	[1] Seller. . . . .	11-12
	[2] Servicer. . . . .	11-12
	[3] Indenture Trustee . . . . .	11-13
	[4] Owner Trustee . . . . .	11-13
	[5] Other Parties. . . . .	11-13
§ 11.05	Evolution of Securitization Structures. . . . .	11-14
	[1] Master Trusts . . . . .	11-14
	[2] Common Law Trusts . . . . .	11-14
	[3] Owner Trusts . . . . .	11-14
	[a] Uses of Owner Trusts. . . . .	11-14
	[b] Master Owner Trusts . . . . .	11-15
	[4] De-Linked Notes . . . . .	11-15
	[a] Class Structure . . . . .	11-15
	[b] Issuance in Tranches. . . . .	11-16
	[5] Other Types of Issuance . . . . .	11-16
	[a] Variable Funding Notes . . . . .	11-16
	[b] Extendible Notes . . . . .	11-16
§ 11.06	Structuring Objectives . . . . .	11-17
	[1] Investment Grade Securities Issuance. . . . .	11-17
	[2] Debt for Tax. . . . .	11-17
	[3] Medium Term Issuance from Short Term As-sets . . . . .	11-17
§ 11.07	General Characteristics of a Credit Card Securitization. . . . .	11-18
	[1] Structure of the Securitization. . . . .	11-18
	[2] Transferor Interest . . . . .	11-19
	[3] Classification of Securitization Periods. . . . .	11-20
	[a] Revolving Period . . . . .	11-20
	[b] Early Amortization Period . . . . .	11-20
	[c] Controlled Amortization Period . . . . .	11-21
	[d] Variable Accumulation Period . . . . .	11-21
	[4] Classification of Collections and Pay Out Events . . . . .	11-22
	[a] Principal Collections. . . . .	11-22
	[b] Finance Charge Collections . . . . .	11-22
	[c] Default Amount . . . . .	11-22
	[d] Floating Allocation Percentage. . . . .	11-22
	[e] Fixed Allocation Percentage. . . . .	11-22
	[f] Pay Out Events. . . . .	11-22
	[g] Excess Spread Test. . . . .	11-23
	[h] Collateral Tests. . . . .	11-23
	[i] Excess Funding Account . . . . .	11-23

**TABLE OF CONTENTS**

xli

	[j]	Finance Charge Waterfall . . . . .	11-23
	[5]	Allocation of Collections . . . . .	11-24
		[a] Allocations during the Revolving Period . . . . .	11-24
		[b] Allocations during the Scheduled Amortization or Accumulation Period . . . . .	11-24
		[c] Allocations during the Early Amortization Period . . . . .	11-24
	[6]	Types of Credit Enhancement used in Credit Card Securitizations . . . . .	11-24
		[a] Subordination . . . . .	11-24
		[b] Cash Collateral Account . . . . .	11-25
		[c] Spread Account . . . . .	11-25
		[d] Financial Guaranty Insurance Policy or Surety Bond . . . . .	11-25
		[e] Letters of Credit . . . . .	11-25
		[f] Derivatives . . . . .	11-25
§ 11.08		Legal Developments . . . . .	11-26
	[1]	Regulation AB . . . . .	11-26
		[a] Discrete Pool . . . . .	11-26
		[b] Prefunding Periods . . . . .	11-26
		[c] Revolving Periods . . . . .	11-26
		[d] Passive Ownership . . . . .	11-26
		[e] No Non-Performing Assets at the Measurement Date . . . . .	11-27
		[f] Disclosure of Credit Score Information . . . . .	11-27
		[g] Static Pool Information . . . . .	11-27
		[h] Exchange Act Reporting . . . . .	11-27
	[2]	Regulation AB II . . . . .	11-27
		[a] Shelf Registration Eligibility Requirements . . . . .	11-28
		[i] CEO Certification . . . . .	11-28
		[ii] Assets Representation Reviewer . . . . .	11-28
		[iii] Dispute Resolution Mechanism . . . . .	11-29
		[iv] Investor Communication . . . . .	11-29
		[b] Changes to the Registration Process . . . . .	11-29
	[3]	Risk Retention . . . . .	11-30
		[a] Revolving Pool Securitizations . . . . .	11-30
		[b] Collateral Certificates . . . . .	11-31

**SECURITIZATIONS**

	[c] Early Amortization of All Outstanding Series . . . . .	11-32
	[d] Disclosures . . . . .	11-32
	[4] Accounting Developments . . . . .	11-33
	[5] FDIC Legal Isolation Rule . . . . .	11-34
	[6] CARD Act, Military Lending Act . . . . .	11-35
	[a] The Credit Card Accountability Responsibility and Disclosure Act of 2009 (“CARD Act”) . . . . .	11-35
	[b] Servicemembers Civil Relief Act; Military Lending Act . . . . .	11-36
	[7] Challenges to Federal Preemption . . . . .	11-36
§ 11.09	Competitive Trends and New Developments . . . . .	11-39
	[1] Headwinds for Credit Card Securitization among Major Bank Programs . . . . .	11-39
	[2] Fintechs and Bank Partnerships . . . . .	11-40
	[a] True Lender . . . . .	11-40
	[b] Valid When Made . . . . .	11-41
	[3] Card-as-a-Service . . . . .	11-41
§ 11.10.	Conclusion . . . . .	11-42

**CHAPTER 12****Auto Loan Securitization**

§ 12.01	Introduction . . . . .	12-2
§ 12.02	Threshold Considerations . . . . .	12-3
	[1] Corporate Finance Diversification and Existing Barriers to Entry . . . . .	12-3
	[a] Operational Readiness Considerations . . . . .	12-4
	[i] Origination and Underwriting Process . . . . .	12-4
	[ii] Performance Data . . . . .	12-5
	[iii] Licensing and Consumer Finance Regulatory Considerations . . . . .	12-6
	[iv] Servicing and Collection Policies and Procedures . . . . .	12-6
§ 12.03	Securitization Sale Structure . . . . .	12-8
	[1] Owner Trust/Securities Matters . . . . .	12-8



## TABLE OF CONTENTS

xliii

	[a] Sale of Loans to Bankruptcy-Remote SPE . . . . .	12-8
	[i] Tax Aspects . . . . .	12-8
	[ii] Credit Enhancement . . . . .	12-10
§ 12.04	Regulatory Considerations: Public Versus Private Securitizations . . . . .	12-13
	[1] Rule 144A and Regulation S Offerings . . . . .	12-13
	[2] Public Securitizations and Regulation AB . . . . .	12-14
	[3] Volcker Rule . . . . .	12-15
	[4] U.S. Credit Risk Retention . . . . .	12-15
	[5] EU Credit Risk Retention and UK Credit Risk Retention . . . . .	12-17
	[6] Securities Act Rule 192 . . . . .	12-18.1
§ 12.05	Security Interest and Perfection Considerations in the Underlying Vehicles . . . . .	12-19
	[1] Perfection by Notation on Certificate of Title . . . . .	12-19
	[2] Maintaining Perfection . . . . .	12-19
§ 12.06	Security Interest and Perfection in the Chattel Paper Representing the Auto Loan Receivables . . . . .	12-21
	[1] Tangible Chattel Paper . . . . .	12-21
	[2] Electronic Chattel Paper . . . . .	12-21
	[3] Financing Statements . . . . .	12-22
§ 12.07	Conclusion . . . . .	12-23

## CHAPTER 12A

### Cellular Tower Securitization

§ 12A.01	Introduction and Recent Developments . . . . .	12A-2
§ 12A.02	Basic Structure and Characteristics of Cellular Tower Securitizations . . . . .	12A-4
	[1] “Indenture-Style” Structure . . . . .	12A-4
	[2] “Loan Agreement-Style” Structure . . . . .	12A-6
§ 12A.03	Applicability of U.S. Risk Retention Rules and Other ABS-Related Regulations to Cellular Tower Securitizations . . . . .	12A-9
	[1] Application and Definition of Asset-Backed Security . . . . .	12A-9
	[a] The Collateralized Assets Must be “Self-Liquidating” . . . . .	12A-10

**SECURITIZATIONS**

	[b] Repayment Must Depend Primarily on the Cash Flow From the Underlying Assets . . . . .	12A-11
	[2] Application of U.S. Risk Retention Rules and Other ABS-Related Regulations to Loan Agreement-Style Structure Cellular Tower Securitizations. . . . .	12A-13
§ 12A.04	Conclusion: Rapid Growth, Structures, and Risk Retention Rules . . . . .	12A-14

**CHAPTER 13****Securitization of Lottery Receivables and  
Structured Settlement Payments**

§ 13.01	Introduction . . . . .	13-2
§ 13.02	Lottery Receivables . . . . .	13-3
	[1] General . . . . .	13-3
	[2] Purchase and Sale of Lottery Receivables . . . . .	13-4
	[a] Representation and Warranties . . . . .	13-4
	[b] The Significance of a “Sale” Transaction . . . . .	13-5
	[3] The Legal Structure of Lottery Receivable Securitizations . . . . .	13-7
	[a] The “Sale” Transaction . . . . .	13-7
	[b] The Special Purpose Entity . . . . .	13-8
	[c] Eligibility Requirements . . . . .	13-9
§ 13.03	The Securitization of Structured Settlement Payments . . . . .	13-13
	[1] Introduction . . . . .	13-13
	[2] Purchase and Sale of Structured Settlement Payments . . . . .	13-15
	[a] Representations and Warranties . . . . .	13-15
	[b] The Anti-Assignment Question . . . . .	13-17
	[c] The “Sale” Transaction . . . . .	13-21
	[3] The Legal Structure of Structured Settlement Securitizations . . . . .	13-22
§ 13.04	Conclusion . . . . .	13-24

**CHAPTER 13A****Private Student Loan Securitizations**

§ 13A.01	Introduction . . . . .	13A-2
§ 13A.02	Types of Private Student Loans and Origination and Underwriting Processes . . . . .	13A-5

**TABLE OF CONTENTS**

xlv

	[1] In-School Student Loans . . . . .	13A-5
	[2] In-School Graduate Student Loans . . . . .	13A-5
	[3] In-School Proprietary Student Loans. . . . .	13A-6
	[4] Refinancing Student Loans . . . . .	13A-6
	[5] Terms for Private Student Loans. . . . .	13A-7
	[6] Origination and Use of Bank Originators and Processing Agents . . . . .	13A-8
	[7] Participation Interests in Multi-disbursement In-School Student Loans. . . . .	13A-11
	[8] Deferment. . . . .	13A-11
	[9] Forbearance . . . . .	13A-12
	[10] Income Share Agreements and Income Based Repayment Loans. . . . .	13A-12
§ 13A.03	Types of Asset-Backed Securities Issued in Securitizations of Private Student Loans . . . . .	13A-14
	[1] Collateralized Debt Securities; Senior and Subordinate Securities. . . . .	13A-14
	[2] Trust Certificates . . . . .	13A-16
	[3] Risk Retention Securities. . . . .	13A-17
§ 13A.04	Transaction Documents Used in Private Student Loan Securitizations . . . . .	13A-18
	[1] Securities Disclosure Documents . . . . .	13A-18
	[a] Loan Level Information . . . . .	13A-18
	[b] Description of Origination and Underwriting Guidelines . . . . .	13A-19
	[c] Information Regarding Transaction Participants. . . . .	13A-20
	[2] Indenture. . . . .	13A-22
	[3] Trust Agreement. . . . .	13A-25
	[4] Loan Purchase Agreement. . . . .	13A-26
	[5] Servicing Agreement . . . . .	13A-27
	[6] Administration Agreement. . . . .	13A-29
	[7] Securities Purchase Agreement . . . . .	13A-30
§ 13A.05	Issues Arising in the Securities Rating Process. . . . .	13A-32
	[1] Reserve Funds and Amortization Triggers. . . . .	13A-32
	[2] Servicers, Administrators and Back-ups . . . . .	13A-34
§ 13A.06	Legal Issues and Legal Opinions Critical for Securitizations of Private Student Loans . . . . .	13A-35

**SECURITIZATIONS**

	[1] Investment Company Act of 1940 Issues . . . . .	13A-35
	[2] Perfection of Security Interest Legal Opinions . . . . .	13A-35
	[3] True Sale Legal Opinions . . . . .	13A-36
	[4] Nonconsolidation Legal Opinions . . . . .	13A-37
§ 13A.07	Certain Considerations Related to Different Types of Sponsors . . . . .	13A-38
§ 13A.08	Bankruptcy Issues Related to Private Student Loans . . . . .	13A-40
§ 13A.09	Regulatory and Licensing Issues Related to Private Student Loans . . . . .	13A-41
§ 13A.10	Federal Income Tax Issues Related to Private Student Loans . . . . .	13A-44

**CHAPTER 14**

**Dedicated Utility Rate Securitizations**

§ 14.01	Introduction . . . . .	14-2
§ 14.02	Costs Recovery by Means of Dedicated Utility Rate Securitizations . . . . .	14-4
§ 14.03	Statutory Prerequisites for a Dedicated Utility Rate Securitization . . . . .	14-6
§ 14.04	Regulatory Issues . . . . .	14-10
	[1] Financing Order . . . . .	14-10
	[2] Servicing by the Utility . . . . .	14-12
	[3] Third Party Providers . . . . .	14-12
§ 14.05	Bankruptcy Issues . . . . .	14-14
	[1] True Sale . . . . .	14-14
	[a] Present Property Right . . . . .	14-14
	[b] Absolute Transfer . . . . .	14-16
	[2] Substantive Consolidation . . . . .	14-18
	[3] Bankruptcy Remoteness . . . . .	14-20
§ 14.06	Tax Issues . . . . .	14-21
	[1] Federal Tax Treatment . . . . .	14-21
	[a] Qualifying Securitization . . . . .	14-21
	[b] Tax Treatment . . . . .	14-22
	[2] Qualifying Municipal Securitizations . . . . .	14-22
§ 14.07	Accounting Issues . . . . .	14-23
§ 14.08	Securities Law Issues . . . . .	14-24
	[1] Public Offering of Securities . . . . .	14-24
	[2] Exemption from Registration . . . . .	14-25
	[3] Trust Indenture Act of 1939 . . . . .	14-26
	[4] Preexisting Utility Indenture . . . . .	14-26

## TABLE OF CONTENTS

xlvii

§ 14.09	Miscellaneous Issues. . . . .	14-28
	[1] State Involvement. . . . .	14-28
	[2] Credit Enhancement. . . . .	14-28
	[3] Documentation . . . . .	14-29
§ 14.10	Conclusion. . . . .	14-31

## CHAPTER 14A

### Equipment Lease-Finance Securitization

§ 14A.01	Historical Perspective . . . . .	14A-2
§ 14A.02	Leasing . . . . .	14A-4
	[1] Lease Types . . . . .	14A-4
	[2] Types of Leasing Companies . . . . .	14A-6
	[a] Bank-Owned Leasing Company. . . . .	14A-6
	[b] Captive Lease-Finance Company. . . . .	14A-7
	[c] Independent Lease-Finance Company. . . . .	14A-7
§ 14A.03	Sale and Pledge of Contracts. . . . .	14A-8
	[1] Core Lease Terms . . . . .	14A-10
	[2] Effect of Lessee's Bankruptcy on an Equipment Lease's Eligibility . . . . .	14A-13
	[3] Risks Presented by Article 2A of the UCC . . . . .	14A-14
	[4] Perfection of Security Interests and Market Exception; Custodians and e-Chattel Paper . . . . .	14A-14
	[5] Use of Statutory Trusts versus Nominee Arrangements . . . . .	14A-16
	[6] Voluntary Repurchases and Substitutions . . . . .	14A-17
§ 14A.04	Securitization Securities. . . . .	14A-19
	[1] Determination of the Securitization Discount Rate and Repayment of Securitization Securities. . . . .	14A-19
	[2] Clean-up Call . . . . .	14A-20
§ 14A.05	Servicing . . . . .	14A-21
	[1] Duties of the Servicer and Backup Servicer. . . . .	14A-21
	[2] Cash Management and Lockbox Intercreditor Arrangements. . . . .	14A-22
	[3] Servicer Advances . . . . .	14A-23

**SECURITIZATIONS**

**CHAPTER 15**

**[RESERVED]**

**CHAPTER 15A**

**Financing American Health Security:**

**The Securitization of Healthcare Receivables**

§ 15A.01	Introduction . . . . .	15A-3
§ 15A.02	The Concept of Securitization . . . . .	15A-7
§ 15A.03	Legal Issues Involving Healthcare Receivables . . . . .	15A-9
	[1] Medicare and Medicaid-Based State Health Programs . . . . .	15A-9
	[a] The Federal and State Anti-Assignment Provisions . . . . .	15A-9
	[b] History of the Federal Anti-Assignment Provisions . . . . .	15A-12
	[c] Loosening the Restrictions . . . . .	15A-14
	[d] The Evolution of HCFA Policy . . . . .	15A-19
	[2] CHAMPUS . . . . .	15A-23
	[3] Blue Cross/Blue Shield . . . . .	15A-25
	[4] Private Insurers . . . . .	15A-26
	[5] CHAMPVA . . . . .	15A-27
	[6] The Veterans Health Benefit Program . . . . .	15A-29
	[7] Indian Health Service . . . . .	15A-30
	[8] The “Hotel Rents” Issue . . . . .	15A-32
§ 15A.04	Interplay Between Healthcare Regulations and Structural Requirements of Securitizations . . . . .	15A-34
	[1] True Sale, Substantive Consolidation, and Other Considerations . . . . .	15A-34
	[a] True Sale . . . . .	15A-34
	[b] Substantive Consolidation . . . . .	15A-37
	[c] Reimbursement Adjustment Rights . . . . .	15A-37
	[d] Medicare . . . . .	15A-38
	[e] Medicaid . . . . .	15A-41
	[2] CHAMPUS and CHAMPVA . . . . .	15A-43
	[a] VA Contract Health Services . . . . .	15A-43
	[b] IHS Contract Health Services . . . . .	15A-44
	[c] Drafting Around the Uncertainty . . . . .	15A-44
	[3] Perfection of Security Interests in Transferred Receivables . . . . .	15A-46

**TABLE OF CONTENTS**

xlix

[a] Perfection of Security Interests in Government Healthcare Receivables . . . . . 15A-47

[b] Perfection of Security Interests in Private Receivables Generated Through Rights of Reimbursement or Managed Care Contracts . . . . . 15A-50

§ 15A.05 Conclusion . . . . . 15A-56

**CHAPTER 15B**

**Timeshare Loan Securitization**

§ 15B.01 Introduction . . . . . 15B-2

§ 15B.02 The Collateral . . . . . 15B-4

[1] Types of Timeshare Ownership . . . . . 15B-4

[a] Deeded Contracts . . . . . 15B-4

[b] “Right to Use” . . . . . 15B-4

[c] Points-Based Vacation Club . . . . . 15B-4

[2] Certain Economic Risks for VOIs . . . . . 15B-4

[a] Uninsured Losses and Natural Disasters . . . . . 15B-5

[b] International Resort Operations . . . . . 15B-5

§ 15B.03 Typical Transaction Structure . . . . . 15B-6

[1] Entities and Legal Effect . . . . . 15B-6

[2] Rule 144A/Regulation S Markets and Their Advantages . . . . . 15B-6

[3] Structuring Bank and Rating Agency Considerations . . . . . 15B-7

[a] Importance of the Originator and Servicer . . . . . 15B-7

[b] Resorts and Resort Management . . . . . 15B-7

[c] Geographic Diversification . . . . . 15B-8

[4] Obligor Upgrades; Optional Repurchase and Substitution Rights . . . . . 15B-8

§ 15B.04 Legal and Regulatory Considerations Related to this Asset Class . . . . . 15B-10

[1] Regulatory Matters . . . . . 15B-10

[a] Licensing of Originator and Servicer in Applicable States . . . . . 15B-10

[b] Consumer and Other Regulatory Overlay . . . . . 15B-10

[c] Risks of Environmental Liabilities . . . . . 15B-11

**SECURITIZATIONS**

	[2] Other Considerations for this Asset	
	Class .....	15B-11
	[a] Legal Opinions.....	15B-11
	[b] Secuiry Interest and Perfection	
	Considerations.....	15B-12
§ 15B.05	Conclusion.....	15B-13

**CHAPTER 16****Principal Mexican Legal Issues of Securitization**

§ 16.01	Introduction.....	16-1
§ 16.02	Transfer of Assets.....	16-4
	[1] General Issues .....	16-4
	[2] Formalities .....	16-6
	[a] Mortgage Loans.....	16-6
	[b] Remittances .....	16-7
	[c] Leases.....	16-8
§ 16.03	Bankruptcy Considerations.....	16-10
	[1] Legal Overview .....	16-10
	[2] Bankruptcy of the Originator .....	16-12
	[3] Bankruptcy of the Trustee.....	16-13
§ 16.04	Other Legal Considerations .....	16-14
	[1] Existing Contractual Limitations.....	16-14
	[2] Specific Regulation Applicable to	
	the Originator.....	16-14
	[3] Taxation Issues.....	16-14
	[4] Securities Laws .....	16-14

**CHAPTER 16A****Structured Finance in Latin America**

§ 16A.01	Introduction.....	16A-2
§ 16A.02	Future Flow Transactions with	
	Cross-Border Assets.....	16A-4
	[1] DPRs.....	16A-6
	[2] Credit Card Merchant Vouchers .....	16A-7
	[3] Remittances .....	16A-9
	[4] Airline Ticket Receivables.....	16A-10
	[5] Export Receivables.....	16A-17
§ 16A.03	Transactions with Local Assets.....	16A-19
	[1] Overview of Existing Asset ABS in	
	Latin America.....	16A-19
	[2] Mexico .....	16A-20
	[a] Typical Vehicle and Structure.....	16A-20



## TABLE OF CONTENTS

li

[b]	Transfer of Receivables and True Sale Considerations. . . . .	16A-21
[c]	Effectiveness and Formalities. . . . .	16A-23
[d]	Bankruptcy Remoteness . . . . .	16A-24
[e]	Servicing/Management of the Receivables . . . . .	16A-24
[f]	Public vs. Private Securitizations . . .	16A-25
[g]	Withholding Tax . . . . .	16A-25
[h]	Local Assets Securitized in Mexico. . . . .	16A-25
[3]	Considerations for Foreign Investors . . .	16A-26
[a]	Currency Risk . . . . .	16A-26
[i]	Transactions from Dollarized Jurisdictions. . . . .	16A-26
[ii]	Transactions Backed by Dollar-Denominated Assets from Non-Dollarized Jurisdictions . . . . .	16A-27
[iii]	Cross-Currency Swaps . . . . .	16A-27
[iv]	Overcollateralization . . . . .	16A-27
[b]	Withholding Tax. . . . .	16A-28
[c]	Local Risks. . . . .	16A-28
[4]	Oil Royalties. . . . .	16A-28
[5]	Operating and Infrastructure Assets . . . .	16A-30

## CHAPTER 17

### Derivatives and Securitization

§ 17.01	Roles of Derivatives in Asset-backed Structures. . . . .	17-2
[1]	Interest Rate Risk Hedges. . . . .	17-4
[2]	Currency Risk Hedges. . . . .	17-6
[3]	Commodity Value Hedges. . . . .	17-6
[4]	Cash Flow Alteration and Yield Enhancement. . . . .	17-6
[5]	Credit and Market Value Derivatives . . .	17-7
§ 17.02	Rating Agency Issues . . . . .	17-10
[1]	Credit Risk . . . . .	17-10
[2]	Market Risk . . . . .	17-11
§ 17.03	Structural Effects on Securitization Documentation . . . . .	17-12
[1]	Executory Contracts. . . . .	17-12
[2]	Asset/Liability Hedging. . . . .	17-13
[3]	Documentation—The ISDA Master Agreement. . . . .	17-13

**SECURITIZATIONS**

	[4] Status of Derivative Contract in the Transaction Documentation . . . . .	17-15
	[5] Status of Derivatives and Securitization in the Lehman Bankruptcy. . . . .	17-16
§ 17.04	Enforceability Issues. . . . .	17-18
	[1] <i>Ultra Vires</i> . . . . .	17-18
	[2] Commodities Laws. . . . .	17-18
	[3] Securities Laws—Regulation AB . . . . .	17-20
	[4] The Dodd-Frank Act and Related Regulations . . . . .	17-21
	[a] Commodity Pools . . . . .	17-22
	[b] Swap Clearing . . . . .	17-23
	[c] Swap Reporting . . . . .	17-24
	[d] Swap Recordkeeping. . . . .	17-25
	[e] Business Conduct and Trading Relationship . . . . .	17-25
	[f] Risk Retention. . . . .	17-26
	[g] Volcker Rule . . . . .	17-26
	[h] Margin Regulations. . . . .	17-27
	[i] Orderly Liquidation Authority. . . . .	17-28
	[5] “Bail-in” Legislation . . . . .	17-28
§ 17.05	Bankruptcy Considerations. . . . .	17-30
	[1] Definitions of Swap Agreement and Swap Participant. . . . .	17-30
	[2] Contractual Right to Liquidate, Terminate, or Accelerate a Swap Agreement. . . . .	17-32
	[3] Setoff and Liquidation of Collateral. . . . .	17-33
	[4] Preferential and Fraudulent Transfers . . . . .	17-34

**CHAPTER 17A**

**Securitization Readiness Considerations for Consumer Finance Companies**

§ 17A.01	Introduction. . . . .	17A-2
§ 17A.02	Existing Sources of Financing and Related Restrictions on Securitizations . . . . .	17A-4
	[1] Negative Covenants . . . . .	17A-4
	[a] Restrictions on Forming New Subsidiaries . . . . .	17A-4
	[b] Prohibition on Additional Debt, Liens, Asset Sales, and Dispositions of Assets. . . . .	17A-5

## TABLE OF CONTENTS

liii

	[2] Restrictions on Permitted Investments . . . . .	17A-5
	[3] Permitted Securitization Mechanics . . . . .	17A-6
	[4] Amendments and Noteholder Notice Requirements . . . . .	17A-7
§ 17A.03	Operational Readiness Considerations . . . . .	17A-8
	[1] Volume, Receivable Documentation, and Quality of Data . . . . .	17A-8
	[2] Licensing Requirements . . . . .	17A-9
	[3] Decentralized vs. Centralized Banking Platform . . . . .	17A-10
	[4] Servicing Platform . . . . .	17A-11
§ 17A.04	Regulatory Considerations . . . . .	17A-13
	[1] Regulation AB II . . . . .	17A-13
	[2] Exchange Act Rules 17g-5 and 17g-7 . . . . .	17A-14
	[3] Exchange Act Rules 15Ga-1 and Rule 15Ga-2 . . . . .	17A-15
	[4] Credit Risk Retention . . . . .	17A-16
	[5] EU Credit Risk Retention and UK Credit Risk Retention . . . . .	17A-17
	[6] Securities Act Rule 192 . . . . .	17A-19
§ 17A.05	Private vs. Public Securitization Transactions . . . . .	17A-24

## CHAPTER 18

### ERISA Issues in Securitizations

§ 18.01	Overview . . . . .	18-2
§ 18.02	Kinds and Regulation of Benefit Plans . . . . .	18-3
§ 18.03	ERISA Fiduciary Duties . . . . .	18-4
	[1] Introduction . . . . .	18-4
	[2] Securitization Impact . . . . .	18-5
	[a] Investor . . . . .	18-5
	[b] Special Purpose Vehicle . . . . .	18-5
§ 18.04	Prohibited Transactions . . . . .	18-7
	[1] Introduction . . . . .	18-7
	[2] Securitization Impact . . . . .	18-8
§ 18.05	The Plan Asset Regulation . . . . .	18-10
	[1] Introduction . . . . .	18-10
	[2] The Plan Asset Regulation Exceptions . . . . .	18-11
	[a] Registered Vehicles . . . . .	18-11
	[b] Operating Companies . . . . .	18-11

**SECURITIZATIONS**

	[c] No Significant Benefit Plan Investor Participation . . . . .	18-12
	[d] Debt . . . . .	18-12
	[e] Guaranteed Governmental Mortgage Pools . . . . .	18-14
§ 18.06	Prohibited Transaction Exemptions . . . . .	18-15
	[1] Introduction . . . . .	18-15
	[2] Class Exemptions . . . . .	18-16
	[a] Qualified Professional Asset Manager Exemption . . . . .	18-16
	[b] Bank Collective Investment Fund and Insurance Company Separate Account Exemptions . . . . .	18-17
	[c] Insurance Company General Accounts . . . . .	18-18
	[i] Insurance Company General Account Regulation . . . . .	18-18
	[ii] Insurance Company General Account Exemption . . . . .	18-18
	[d] INHAM Exemption . . . . .	18-19
	[e] Mortgage Pool Exemption . . . . .	18-20
	[3] Individual Exemptions . . . . .	18-20
	[a] Underwriter Exemptions . . . . .	18-20
	[b] Credit Card Receivables . . . . .	18-24
	[c] Other Exemptions . . . . .	18-24

**CHAPTER 19****Commercial Mortgage-Backed Securities  
and the Rating Process**

§ 19.01	Overview . . . . .	19-2
§ 19.02	Regulation of NRSROs and the Impact on the CMBS Rating Process . . . . .	19-4
§ 19.03	Overview of the CMBS Rating Process . . . . .	19-6
§ 19.04	Key Factors in the Credit Analysis of a CMBS Transaction . . . . .	19-10
	[1] Conduit Transactions . . . . .	19-10
	[a] Sample Selection . . . . .	19-10
	[b] Property Level Analysis . . . . .	19-11
	[c] Loan Level Analysis . . . . .	19-14
	[d] Pool Level Analysis . . . . .	19-14
	[e] Legal and Structural Analysis . . . . .	19-14
	[f] Credit Modeling and Determination of Credit Enhancement Levels . . . . .	19-16

## TABLE OF CONTENTS

iv

	[g] Surveillance . . . . .	19-16
	[2] SASB Transactions. . . . .	19-17
	[3] Large Loan Transactions . . . . .	19-19
	[4] CRE CLOs . . . . .	19-21
§ 19.05	Conclusion. . . . .	19-23

## CHAPTER 19A

### Pooled Aircraft Securitization

§ 19A.01	Introduction . . . . .	19A-2
§ 19A.02	Brief History and Offerings . . . . .	19A-4
§ 19A.03	Basic Structure and Documentation. . . . .	19A-5
	[1] The Issuer . . . . .	19A-5
	[2] The Trust Indenture . . . . .	19A-7
	[3] The Sponsor/Seller and Asset Purchase Agreement. . . . .	19A-8
	[4] Service Providers . . . . .	19A-9
§ 19A.04	Characteristics and Recent Developments of Pooled Aircraft Securitization . . . . .	19A-11
	[1] Portfolio Aircraft Types and Age . . . . .	19A-11
	[2] Concentration Limits . . . . .	19A-12
	[3] Monoline Insurers and Liquidity Facility Providers . . . . .	19A-13
	[4] Equity Interests. . . . .	19A-15
	[5] Risk Retention . . . . .	19A-16
	[6] Impact of COVID-19 on Pooled Aircraft Securitizations. . . . .	19A-17
§ 19A.05	Conclusion. . . . .	19A-19

## CHAPTER 19B

### Blockchain and Securitization: A European Perspective

§ 19B.01	Introduction . . . . .	19B-1
§ 19B.02	What is Blockchain?. . . . .	19B-3
§ 19B.03	Securitization Transactions Using Blockchain . . . . .	19B-5
§ 19B.04	Regulatory Treatment of Tokens . . . . .	19B-8
	[1] Payment Tokens . . . . .	19B-9
	[2] Utility Tokens. . . . .	19B-9
	[3] Asset Tokens . . . . .	19B-9
§ 19B.05	Conclusion. . . . .	19B-12

## SECURITIZATIONS

## CHAPTER 20

## United Kingdom Commercial Property Securitisation

§ 20.01	Introduction . . . . .	20-2
§ 20.02	Shopping Centre Securitisations. . . . .	20-4
	[1] Rental Terms . . . . .	20-4
	[2] Turnover Rents. . . . .	20-4
	[3] Rent Review. . . . .	20-5
	[4] Bunching of Breaks and Rent Reviews . . . . .	20-5
	[5] Keep Open Provisions . . . . .	20-6
	[6] Possible Misrepresentations by Property Developer. . . . .	20-6
§ 20.03	Synthetic Sale and Leasebacks . . . . .	20-7
§ 20.04	Pool Cutting . . . . .	20-8
§ 20.05	Lease Terms in Synthetic Deals. . . . .	20-10
§ 20.06	Commercial Mortgage Securitisations Conduits . . . . .	20-16
	[1] Special Purpose Vehicles. . . . .	20-16
	[2] Fixed and Floating Charges—The Risk of Recharacterisation . . . . .	20-19
	[3] Lockboxes. . . . .	20-22
	[4] Springing Lockbox. . . . .	20-22
	[5] Leaping Lockbox . . . . .	20-22
§ 20.07	Limited Partnerships. . . . .	20-24
§ 20.08	Combination and Set-Off . . . . .	20-29
§ 20.09	Obligation to Make Further Advances—Assignability of Contract . . . . .	20-30
§ 20.10	Contaminated Land Regime. . . . .	20-31
§ 20.11	Conclusion. . . . .	20-33

## CHAPTER 21

## Securitized in Ireland

§ 21.01	Introduction. . . . .	21-3
§ 21.02	Domestic Securitization in Ireland. . . . .	21-4
	[1] Introduction . . . . .	21-4
	[2] Transfer of Assets . . . . .	21-4
	[a] Novation. . . . .	21-4
	[b] Sub-Participation . . . . .	21-4
	[c] Assignment . . . . .	21-5
	[3] Perfection of the Assignment . . . . .	21-7
	[4] Effecting a True Sale. . . . .	21-8

## TABLE OF CONTENTS

lvii

	[5] Challenging Transfers . . . . .	21-10
	[a] Re-Characterization Risk. . . . .	21-10
	[b] Improperly Transferred Assets . . . .	21-10
	[c] Unfair Preference. . . . .	21-11
	[d] Disclaimer of Onerous Contracts by Liquidator. . . . .	21-12
	[e] Avoidance of Property Dispositions . . . . .	21-13
	[6] Secured Loan Transactions . . . . .	21-13
	[a] The Problem of Examinership . . . .	21-13
	[b] Capital Gains Tax . . . . .	21-16
	[c] Stamp Duty . . . . .	21-17
	[d] VAT . . . . .	21-18
§ 21.03	The International Securitization Market in Ireland . . . . .	21-19
	[1] Introduction . . . . .	21-19
	[2] Why Ireland? . . . . .	21-19
	[3] Facilitation of SPVs in Ireland . . . . .	21-19
	[4] Qualifying Companies . . . . .	21-20
	[5] Transaction Size. . . . .	21-21
	[6] Withholding Tax on Notes Issued by an SPV . . . . .	21-22
	[7] Deduction of Expenses . . . . .	21-23
	[8] Value Added Tax . . . . .	21-24
	[9] Stamp Duty. . . . .	21-24
	[10] Revenue Notifications . . . . .	21-25
	[11] Legal Form of SPVs . . . . .	21-25
	[a] Wholesale Debt Issuers. . . . .	21-26
	[b] Retail Debt Issuers . . . . .	21-26
	[12] Reporting Obligations . . . . .	21-26
	[a] FVC Reporting . . . . .	21-26
	[b] CBI (Non-FVC) Reporting . . . . .	21-28
	[13] Market Abuse. . . . .	21-28
	[a] Handling of Inside Information . . . .	21-29
	[b] Insider Dealing . . . . .	21-30
	[c] Insider Lists. . . . .	21-31
	[d] Market Manipulation. . . . .	21-31
	[e] Market Soundings . . . . .	21-32
	[f] Managers' Transactions. . . . .	21-32
	[14] Prospectus Directive. . . . .	21-33
	[a] Introduction . . . . .	21-33
	[b] Requirement to Publish an Approved Prospectus. . . . .	21-33
	[c] Requirement to Publish a Prospectus Supplement . . . . .	21-34

**SECURITIZATIONS**

[d]	Walk-away Rights . . . . .	21-34
[e]	Responsibility Attaching to a Prospectus . . . . .	21-35
[f]	CBI Approval Process . . . . .	21-36
[g]	Publication of Prospectus . . . . .	21-36
[h]	Passporting into Ireland . . . . .	21-36
[15]	Transparency Directive . . . . .	21-36
[a]	Nomination of Home Member State . . . . .	21-37
[b]	Disclosure of Regulated Information . . . . .	21-37
[c]	Periodic Reporting . . . . .	21-38
[d]	Equal Treatment of Noteholders . . . . .	21-38
[16]	AIFMD . . . . .	21-38
[17]	EMIR . . . . .	21-39
[a]	Mandatory Central Counterparty Clearing . . . . .	21-40
[b]	Reporting Obligations . . . . .	21-40
[c]	Risk Mitigation Requirements . . . . .	21-41
[18]	CRAs and Credit Ratings . . . . .	21-41
[a]	Dual Rating requirement . . . . .	21-41
[b]	Disclosure Requirements . . . . .	21-42
[19]	Recent Developments . . . . .	21-42
[a]	Changes to the Transparency Directive Regime . . . . .	21-42
[b]	Securitization Regulation . . . . .	21-43

**CHAPTER 22****Principal Legal Issues of Italian Securitization**

§ 22.01	Introduction . . . . .	22-2
§ 22.02	Key Features of the Securitization Law . . . . .	22-4
§ 22.03	Scope of the Securitization Law . . . . .	22-6
[1]	Securitizable Assets . . . . .	22-7
[2]	The Originator . . . . .	22-9
[3]	Ring-fencing of Securitized Assets . . . . .	22-9
[4]	The Assignment . . . . .	22-10
[a]	Enforceability through Publication in the Official Gazette and Filing with the Register of Enterprises . . . . .	22-10
[b]	Enforceability through Purchase Price Bearing a Date Certain at Law . . . . .	22-11



## TABLE OF CONTENTS

lix

	[c] Formalities Required for the Assignment of Receivables Owed to the Italian Public Administration . . . . .	22-11
	[d] With Recourse vs. Without Recourse. . . . .	22-12
	[e] Insolvency Claw-Back Advantages Under the Securitization Law . . . . .	22-12
	[5] Securitizations Performed through Loans to Entities Other than Individuals and Microenterprises. . . . .	22-13
	[6] Securitizations Performed through Loans to Entities Other than Individuals and Microenterprises . . . . .	22-13
	[7] Securitizations Carried Out Through Investment Funds . . . . .	22-14
	[8] The Notes . . . . .	22-15
	[9] Prospectus and Investment Solicitation Requirements . . . . .	22-16
	[10] Servicing of Assigned Receivables . . . . .	22-17
	[11] Covered Bonds . . . . .	22-18
§ 22.04	Tax and Accounting Issues . . . . .	22-20
	[1] Assignment of Receivables . . . . .	22-20
	[2] Issue of Bonds . . . . .	22-20
	[3] Tax Regime Applicable to the Securitization Company . . . . .	22-20
§ 22.05	Servicing and Collection Activity—VAT Regime . . . . .	22-22
	[1] Interest Payable on Italian Notes . . . . .	22-22
§ 22.06	Appendix: Translation of the Italian Securitization Law . . . . .	22-24

## CHAPTER 22A

### Securitization in Portugal

§ 22A.01	Introduction . . . . .	22A-2
	[1] Securitization Framework . . . . .	22A-2
	[2] Rules Under Portuguese Jurisdiction Governing Securitization Transactions . . . . .	22A-2
	[3] Securitization Market in Portugal . . . . .	22A-3
§ 22A.02	Credit Securitization Funds . . . . .	22A-4
	[1] The Fund—Concept and Types . . . . .	22A-4

## SECURITIZATIONS

	[2] The Management Company . . . . .	22A-4
	[3] The Custodian . . . . .	22A-5
§ 22A.03	Credit Securitization Companies . . . . .	22A-6
	[1] Corporate Structure . . . . .	22A-6
	[2] Regulatory Compliance . . . . .	22A-6
	[3] Corporate Object . . . . .	22A-6
	[4] Nature of Credits . . . . .	22A-7
	[5] Who May Assign Assets for Securitization Purposes? . . . . .	22A-7
	[6] Assignment of Credits . . . . .	22A-7
	[a] Notice to Debtors . . . . .	22A-7
	[b] Assignment Formalities . . . . .	22A-8
	[c] Assignment and Bankruptcy . . . . .	22A-8
	[7] Risk of Set-Off by Borrowers . . . . .	22A-9
	[a] General . . . . .	22A-9
	[b] Set-Off on Bankruptcy . . . . .	22A-9
	[c] Data Protection Law . . . . .	22A-9
	[d] Mortgages Charging Real Estate and Other Security under Portuguese Law . . . . .	22A-10
	[i] Concept . . . . .	22A-10
	[ii] Legal Form, Registry and Priority Rights . . . . .	22A-10
	[e] Enforcement and Court Procedures . . . . .	22A-11

## CHAPTER 23

### Principal Legal Issues of German True Sale Securitization

§ 23.01	Introduction . . . . .	23-2
§ 23.02	Legal Issues In True Sale Securitizations . . . . .	23-4
	[1] Sale, Transfer and Isolation of Assets . . . . .	23-4
	[a] Assignment . . . . .	23-5
	[b] SPV's Right to Freely Dispose of the Assigned Receivables . . . . .	23-6
	[c] SPV Bears Credit Risk of Receivables Obligors . . . . .	23-6
	[2] Insolvency Of the Originator . . . . .	23-6
	[a] True Sale Versus Secured Loan . . . . .	23-6
	[b] Future Receivables . . . . .	23-7
	[i] Assignment of Future Receivables . . . . .	23-7

## TABLE OF CONTENTS

lxi

	[ii] Contracts underlying Future Receivables . . . . .	23-7
	[c] Avoidance by the Insolvency Trustee of the Originator . . . . .	23-8
	[3] Legal Services Act . . . . .	23-9
	[4] Commingling . . . . .	23-10
	[a] Security Interest Over the Cash Collections . . . . .	23-10
	[b] Commingling Risk Upon Termination of the Servicing Agreement or Institution of Insolvency Proceedings . . . . .	23-11
	[5] Data Protection and Banking Secrecy . . . . .	23-12
	[a] Federal Data Protection Act . . . . .	23-12
	[b] Banking Secrecy . . . . .	23-13
§ 23.03	Tax and Accounting Issues . . . . .	23-16
	[1] German Trade Tax Liability . . . . .	23-16
	[2] German VAT Liability . . . . .	23-18
	[3] True Sale for Accounting Purposes . . . . .	23-20
§ 23.04	Regulatory Issues . . . . .	23-23
Appendix	Selected German Codes and Statutes (translation) . . . . .	23-27
	BaFin—Federal Financial Supervisory Authority (translation) . . . . .	23-27

## CHAPTER 23A

### Securitizations in Spain

§ 23A.01	Introduction . . . . .	23A-2
§ 23A.02	Credit Right Transfer . . . . .	23A-4
	[1] Contractual Requirements . . . . .	23A-4
	[a] Consent . . . . .	23A-4
	[b] Purpose . . . . .	23A-4
	[c] Consideration . . . . .	23A-4
	[2] Formalities . . . . .	23A-4
	[3] Notification of the Transfer . . . . .	23A-5
	[4] Transferable Credits . . . . .	23A-6
	[5] Effects of the Credit Transfer . . . . .	23A-6
	[6] Transfer of the Credits' Guarantees . . . . .	23A-6
§ 23A.03	Credit Transfers Within the Framework of a Securitization Transaction . . . . .	23A-8
	[1] Financial Requirements to Be Complied With by the Originator . . . . .	23A-8
	[2] Transfer Conditions . . . . .	23A-8

## SECURITIZATIONS

	[3]	Types of Assets That May Be Securitized. . . . .	23A-9
		[a] Rights Resulting from Mortgage Loans . . . . .	23A-9
		[b] Rights Resulting from the Nuclear Moratorium . . . . .	23A-9
		[c] Other Assets That May Be Securitized . . . . .	23A-10
	[4]	Other Issues Related to Credit Right Transfers Within Securitization Transactions . . . . .	23A-10
		[a] Formalities . . . . .	23A-10
		[b] Transfer of Future Credit Rights Not Identified at the Time of Execution . . . . .	23A-11
	[5]	Representation of the Parties: Power of Attorney . . . . .	23A-11
§ 23A.04		Securitization Vehicles . . . . .	23A-12
	[1]	Securitization Funds in Spain . . . . .	23A-12
		[a] Classes . . . . .	23A-12
		[b] Incorporation Requirements . . . . .	23A-12
		[c] Legal Regime . . . . .	23A-13
		[d] Termination . . . . .	23A-13
	[2]	Fund Mangement Companies . . . . .	23A-14
		[a] Authorization . . . . .	23A-14
		[b] Incorporation . . . . .	23A-14
§ 23A.05		Cross-Border Credit Rights Transfers . . . . .	23A-15
	[1]	Cases Where the Transferee Is Based in the EU . . . . .	23A-15
	[2]	Cases Where the Transferee Is Based Outside the EU . . . . .	23A-15
§ 23A.06		Marketing of Securities in Spain by Foreign Entities . . . . .	23A-16
§ 23A.07		Insolvency Proceedings Considerations . . . . .	23A-17
	[1]	Overview . . . . .	23A-17
	[2]	Insolvency Proceedings Against One of the Parties in a Securitization Transaction . . . . .	23A-17
		[a] <i>Concurso</i> Against the Debtor [End Client] . . . . .	23A-17
		[i] Normal Situation . . . . .	23A-18
		[ii] Special Case . . . . .	23A-18
		[b] <i>Concurso</i> Against the Originator . . . . .	23A-19

## TABLE OF CONTENTS

lxiii

[c]	<i>Concurso</i> Against the Issuer of Securities . . . . .	23A-20
[d]	<i>Concurso</i> Against the Special Purpose Vehicle . . . . .	23A-20
§ 23A.08	Conclusions . . . . .	23A-21

## CHAPTER 24

[Reserved]

## CHAPTER 24A

### Practical Guide to Volcker Rule Considerations for Covered Bond Investors

§ 24A.01	Whether Investment is Prohibited or Limited . . . . .	24A-2
[1]	Express Statement in Prospectus . . . . .	24A-2
[2]	Whether Covered Bond Investment Constitutes Ownership Interest . . . . .	24A-2
[3]	What Constitutes Engagement in Business of Investing, Reinvesting or Trading in Securities . . . . .	24A-3
[a]	Exemptions from Registration under Investment Company Act . . . . .	24A-3
§ 24A.02	Investor Analysis Under Volcker Rule . . . . .	24A-5
[1]	Three Step Approach . . . . .	24A-5
[a]	Initial Covered Fund Review . . . . .	24A-5
[i]	Publicly-Registered or Public Issuer . . . . .	24A-5
[ii]	Express Exemption . . . . .	24A-6
[iii]	Section 3(c)(5) Exemption . . . . .	24A-6
[iv]	Rule 3a-6 Exemption . . . . .	24A-6
[b]	Loan Securitization Exclusion . . . . .	24A-7
[i]	The Qualified Covered Bond Exclusion . . . . .	24A-7
[c]	Review of Restrictive Legends . . . . .	24A-7
[2]	Ownership Interest . . . . .	24A-8
[3]	Rule 3a-7 Review . . . . .	24A-10

## CHAPTER 25

## The Law of Securitization in Australia

§ 25.01	Introduction . . . . .	25-6
§ 25.02	General Overview of the Issuers and Securitized Instruments in Australia . . . . .	25-8
	[1] Introduction . . . . .	25-8
	[2] Issuers . . . . .	25-8
	[3] Securitized Instruments . . . . .	25-8
	[4] The Form of Debt Securities . . . . .	25-9
	[a] Registered Securities . . . . .	25-9
	[b] Dematerialized Securities . . . . .	25-9
§ 25.03	The Regulation of Securitization Under the Australian Corporations Act 2001 (the Corporations Act) . . . . .	25-11
	[1] Introduction . . . . .	25-11
	[2] The Classification of Securitized Instruments Under the <i>Corporations Act</i> . . . . .	25-11
	[a] Debentures . . . . .	25-11
	[b] Interests in a Managed Investment Scheme . . . . .	25-12
	[i] Definition . . . . .	25-12
	[ii] Statutory Requirements . . . . .	25-13
	[c] Debentures and Interests in a Managed Investment Scheme . . . . .	25-13
	[d] Offers That Do Not Need Disclosure: Their Application to Securitizations . . . . .	25-14
	[3] The Regulation of Participants in the Securities Industry . . . . .	25-15
	[a] Financial Services Regulatory Regime . . . . .	25-15
	[b] When is a License Required? . . . . .	25-15
	[c] What is a Financial Product? . . . . .	25-16
	[d] Provision of a Financial Service . . . . .	25-17
	[i] Financial Product Advice . . . . .	25-17
	[ii] Dealing in a Financial Product . . . . .	25-17
	[iii] Providing a Custodial or Depository Service . . . . .	25-18
	[e] Securitization Exemption . . . . .	25-18
	[f] Other Exemptions . . . . .	25-18
	[g] Consequences of a Failure to Have an AFSL . . . . .	25-19
	[4] Conclusion . . . . .	25-19

**TABLE OF CONTENTS**

lxv

§ 25.04	The Disclosure and Civil Liability Regimes for Disclosure Documents in Australia . . . .	25-20
	[1] Introduction . . . . .	25-20
	[2] The Disclosure Obligations of the <i>Corporations Act</i> . . . . .	25-20
	[a] Overview . . . . .	25-20
	[b] Disclosure Documents . . . . .	25-21
	[c] Breach of the Statutory Disclosure Obligations . . . . .	25-22
	[i] Section 728 . . . . .	25-22
	[ii] Criminal Consequences . . . . .	25-23
	[iii] Civil Consequences . . . . .	25-23
	[iv] Defenses . . . . .	25-23
	[d] The Application of the Positive Disclosure Obligations to Securitization . . . . .	25-23
	[3] Civil Liability for a Defective Disclosure Document . . . . .	25-24
	[a] Legislative Overview . . . . .	25-24
	[b] Misleading or Deceptive Conduct . . . . .	25-25
	[c] Omissions From a Disclosure Document . . . . .	25-26
	[d] Inadvertent Omissions . . . . .	25-28
	[e] The Consequences of a Contravention . . . . .	25-29
	[f] Two Classes of Persons Exposed to Civil Liability . . . . .	25-30
	[i] Engaged in a Contravention . . . . .	25-30
	[ii] Involved in a Contravention . . . . .	25-30
	[g] The Position of Dealers . . . . .	25-31
	[h] Disclaimers . . . . .	25-35
	[i] Their Use in a Disclosure Document . . . . .	25-35
	[ii] Disclaimers as a Means of Avoiding a Contravention . . . . .	25-35
	[iii] Using Disclaimers to Eliminate Reliance . . . . .	25-35
	[i] Liability Through Tort . . . . .	25-36
	[4] Conclusion . . . . .	25-37
§ 25.05	The Assignment of Receivables in Australia . . . . .	25-38
	[1] Introduction . . . . .	25-38
	[2] Legal and Equitable Assignments and Receivables . . . . .	25-38

**SECURITIZATIONS**

	[a]	Legal Assignment . . . . .	25-38
	[i]	Absolute Assignment by Writing Under the Hand of the Assignor . . . . .	25-39
	[ii]	Express Notice to the Debtor . . . . .	25-39
	[b]	Equitable Assignment . . . . .	25-40
	[c]	Other Considerations . . . . .	25-41
	[i]	Personal Property Securities Act . . . . .	25-41
	[ii]	Novation . . . . .	25-42
	[iii]	Assignment of Mortgages . . . . .	25-42
	[iv]	Servicing . . . . .	25-43
	[v]	Perfection of Title . . . . .	25-43
	[3]	The Main Risks Associated With Not Giving Notice of Assignment to a Debtor . . . . .	25-45
	[4]	Conclusion . . . . .	25-46
§ 25.06		Set-off and Securitization in Australia . . . . .	25-47
	[1]	Introduction . . . . .	25-47
	[2]	Statutory Set-Off . . . . .	25-47
	[3]	Equitable Set-Off . . . . .	25-48
	[4]	Contractual Set-Off . . . . .	25-49
	[5]	Insolvency Set-Off . . . . .	25-49
	[6]	Mutuality . . . . .	25-50
	[7]	Contractual Exclusion of Set-Off . . . . .	25-51
	[8]	Set-Off and Unfair Terms Law . . . . .	25-52
	[a]	Implications Under Unfair Terms Law . . . . .	25-52
	[b]	Deposit-taking Institution's Legitimate Interest . . . . .	25-52
	[c]	No Significant Imbalance in the Parties Rights and Obligations . . . . .	25-53
	[9]	Customer's Ability to Set-Off Against an Insolvent Deposit-Taking Institution . . . . .	25-54
	[a]	Statutory Set-Off . . . . .	25-54
	[b]	Equitable Set-Off . . . . .	25-54
	[c]	Contractual Set-Off . . . . .	25-54
	[d]	Insolvency Set-Off . . . . .	25-55
	[10]	Conclusion . . . . .	25-55
§ 25.07		Insolvency and Securitization in Australia . . . . .	25-56
	[1]	Introduction . . . . .	25-56
	[2]	Insolvent Companies . . . . .	25-56
	[a]	Definition of Insolvent . . . . .	25-56



**TABLE OF CONTENTS**

I xvii

	[b] The Role of a Liquidator . . . . .	25-57
	[c] The Role of an Administrator . . . . .	25-58
	[3] Insolvent Trusts and Trustees . . . . .	25-59
	[a] Insolvency of the Trust . . . . .	25-59
	[b] Insolvency of the Trustee . . . . .	25-60
	[4] Secured Obligations . . . . .	25-60
	[5] Transactions Void or Voidable Due to Insolvency . . . . .	25-61
	[a] Unfair Loans . . . . .	25-62
	[b] Uncommercial Transactions . . . . .	25-62
	[6] Segregated Issuers . . . . .	25-64
	[7] Rating Agencies Criteria . . . . .	25-65
	[a] Commercial Sale of Assets . . . . .	25-65
	[b] No Mixing of Assets . . . . .	25-65
	[c] Limited Powers of Issuers . . . . .	25-65
	[d] Tax Liability . . . . .	25-66
	[e] Limited Recourse of Creditors . . . . .	25-66
	[8] Stay on <i>Ipsa Facto</i> rights . . . . .	25-67
	[a] Contracts and Rights Exempt from Stay . . . . .	25-67
	[b] Interpreting the Regulations . . . . .	25-67
	[9] Conclusion . . . . .	25-68
§ 25.08	Taxation Issues for Securitization in Australia . . . . .	25-69
	[1] Introduction . . . . .	25-69
	[2] Income Tax Issues for Securitization Programs . . . . .	25-69
	[a] Overview . . . . .	25-69
	[b] Taxation Issues Relating to Trusts . . . . .	25-69
	[i] General Principles . . . . .	25-69
	[ii] Proportionate Approach . . . . .	25-70
	[iii] Taxation of Trusts as Companies . . . . .	25-70
	[c] Trust Loss Provisions . . . . .	25-70
	[i] Background . . . . .	25-70
	[ii] Different Types of Trusts . . . . .	25-71
	[iii] Fixed Trusts with Non-Fixed Trust Beneficiaries . . . . .	25-71
	[iv] Taxation of Trusts: Trustee Beneficiary Non-Disclosure Tax . . . . .	25-72
	[d] Taxation of Financial Arrangements . . . . .	25-72
	[e] The Taxation Treatment of Management Fees . . . . .	25-73
	[f] Pay As You Go Withholding . . . . .	25-74

**SECURITIZATIONS**

	[3]	Interest Withholding Tax and Securitization .....	25-74
	[a]	Background.....	25-74
	[b]	The Current Exemptions Overview.....	25-74
	[i]	Definition of Interest.....	25-75
	[ii]	Definition of Debenture .....	25-76
	[iii]	Definition of Company.....	25-76
	[c]	The Public Offer Tests.....	25-76
	[d]	Certain Issues of Debentures or Debt Interests Will Always Fail the Public Offer Test .....	25-77
	[e]	Anti-Avoidance Provisions .....	25-78
	[4]	The Debt/Equity Rules .....	25-78
	[5]	Thin Capitalization.....	25-79
	[6]	Foreign Exchange Gains and Losses ...	25-80
	[7]	Consolidation .....	25-80
	[8]	Goods and Services Tax Issues Relevant to Securitization .....	25-81
	[a]	Overview.....	25-81
	[b]	Input Tax Credits .....	25-81
	[c]	Types of Supplies.....	25-82
	[i]	Taxable Supplies .....	25-82
	[ii]	GST-Free Supplies .....	25-82
	[iii]	Input Taxed Supplies.....	25-83
	[iv]	Financial Supplies .....	25-84
	[v]	Incidental Financial Supplies... ..	25-85
	[d]	Reverse Charging.....	25-85
	[e]	Registration Under the GST Act. ...	25-86
	[i]	Relevant Definitions .....	25-86
	[ii]	Registration of a Securitization Trust .....	25-87
	[f]	GST Groups .....	25-88
	[g]	Typical GST Outcomes in a Securitization Structure .....	25-88
	[h]	Conclusion .....	25-89
§ 25.09		Stamp Duty and Securitization in Australia... ..	25-90
	[1]	Introduction .....	25-90
	[2]	<i>Duties Act</i> : General Overview.....	25-90
	[3]	Creation of a Securitization Trust.....	25-91
	[4]	Transfers of Mortgages and Other Assets .....	25-91
	[5]	Charge Over Property .....	25-92
	[6]	Issue of Securities to Investors.....	25-92
	[7]	Transfer of Securities Between Investors and the Secondary Market.....	25-92

## TABLE OF CONTENTS

lxix

	[8] Relief for Mortgage-Backed Securities in New South Wales . . . . .	25-92
	[9] Relief in Other States . . . . .	25-96
	[10] Conclusion . . . . .	25-96
§ 25.10	The Regulation of the Participation by Banks and Other Deposit-Taking Institutions in Securitized Instruments in Australia . . . . .	25-97
	[1] Australian Prudential Regulation Authority Guidelines . . . . .	25-97
	[a] Introduction . . . . .	25-97
	[b] Separation, Disclosure and Risk Management Framework . . . . .	25-98
	[c] Operational Requirements of Capital Relief and “Funding-Only” Transactions . . . . .	25-99
	[d] Regulatory Capital Requirements for Securitization Exposures . . . . .	25-100
	[e] Provision of Facilities and Services by ADIs . . . . .	25-100
	[2] Conclusion . . . . .	25-101

## CHAPTER 25A

### The Law of Securitization in China

§ 25A.01	Introduction . . . . .	25A-2
§ 25A.02	Dual Securitization Systems: CABS and ABS . . . . .	25A-4
	[1] Typical CABS and ABS Transaction Structures . . . . .	25A-5
	[2] Key Transaction Parties . . . . .	25A-7
	[a] Sponsor . . . . .	25A-7
	[b] Issuing Entity . . . . .	25A-8
	[c] Originator . . . . .	25A-8
	[d] Trustee and Manager . . . . .	25A-9
	[3] Underlying Assets . . . . .	25A-11
	[4] Credit Enhancement and Ratings Requirements . . . . .	25A-12
	[5] Listing and Trading . . . . .	25A-13
	[6] Integration of the CABS and ABS Systems . . . . .	25A-14
§ 25A.03	Legal Framework . . . . .	25A-16
	[1] Overview of the Legislative System . . . . .	25A-16
	[2] PBOC and CBRC Rules . . . . .	25A-17
	[3] CSRC Rules . . . . .	25A-19

**SECURITIZATIONS**

§ 25A.04	Key Legal Issues . . . . .	25A-22
	[1] “Bankruptcy Remoteness” of the SPT and the SAMP . . . . .	25A-22
	[2] Asset Transfer and True Sales . . . . .	25A-23
§ 25A.05	Appendix . . . . .	25A-26
	[1] List of Main Chinese Securitization Rules as of December 31, 2014 . . . . .	25A-26
	[2] Administrative Rules for the Credit Asset Securitization Pilot Program . . . . .	25A-28
	[3] Formatting Requirement for Prospectus for Asset Backed Securities . . . . .	25A-38
	[4] Provisions for the Administration of Asset Securitization Business of Securities Companies and Subsidiaries of Fund Management Companies . . . . .	25A-39
	[5] Guidelines for Securities Companies and Subsidiaries of Fund Management Companies on Asset Securitization Information Disclosure . . . . .	25A-50
	[6] Guidelines for Securities Companies and Subsidiaries of Fund Management Companies on Securitization Due Diligence Investigation . . . . .	25A-56

**CHAPTER 26****[Reserved]****CHAPTER 27****French Issues on Securitization**

§ 27.01	Introduction . . . . .	27-3
	[1] Definition . . . . .	27-3
	[2] Legislative Framework . . . . .	27-4
§ 27.02	Structure of Securitization Entities . . . . .	27-6
	[1] Legal Status . . . . .	27-6
	[a] Fonds Commun de Titrisation . . . . .	27-6
	[b] Securitization Company . . . . .	27-6
	[2] Purpose of the Securitization Entity . . . . .	27-7
	[a] Assets of the SE . . . . .	27-7

**TABLE OF CONTENTS**

lxxi

	[b]	Management of Receivables . . . . .	27-8
		[i] Acquisition of Receivables . . .	27-8
		[ii] Procedure for the Acquisition of Receivables . . . . .	27-9
		[iii] Legal Effects of the Transfer of Receivables— Bankruptcy Issues . . . . .	27-10
	[c]	Underlying Debtors . . . . .	27-11
		[i] Assignees of Underlying Receivables . . . . .	27-11
		[ii] Efficiency of Export Receivables . . . . .	27-12
		[iii] Power of SE over Assigned Receivables . . . . .	27-13
	[d]	Financing the SE . . . . .	27-14
		[i] Issuance of Units and Debt Instruments, Borrowings, and Transfer of Insurance Risks . . . . .	27-14
		[ii] Managing Cash . . . . .	27-16
		[iii] Investment of Units . . . . .	27-17
§ 27.03		Setting up a Securitization Entity . . . . .	27-21
	[1]	The Management Company . . . . .	27-21
	[2]	The Custodian . . . . .	27-22
§ 27.04		Protection of Unit-Holders . . . . .	27-23
	[1]	Protection Against Payment Defaults . . .	27-23
		[a] Hedging and Credit Enhancement Mechanisms . . . . .	27-23
		[i] Security Interests and Collateral Attached to Receivables . . . . .	27-23
		[ii] Obtaining a Guarantee . . . . .	27-23
		[iii] Obtaining Loans or Other Resources . . . . .	27-24
		[iv] Synthetic Securitization . . . . .	27-24
	[2]	Protection Against Management Risks . . .	27-24
		[a] Various Prohibitions . . . . .	27-24
		[i] Prohibition on Solicitation . . .	27-24
		[ii] Limitation on the Distribution of Certain Types of Units . . .	27-24
		[iii] Restrictions on the Pledge of Units (or Debt Instruments) . . . . .	27-25

**SECURITIZATIONS**

	[iv] Limitation on Holding Units or Shares—Conflicts of Interest . . . . .	27-25
	[v] Limitation on the Liability of Unit-Holders or Shareholders . . . . .	27-25
	[b] General and Specific Information to Investors . . . . .	27-25
	[c] Supervision of the SE . . . . .	27-26
	[d] Rights of Unit-Holders and Shareholders . . . . .	27-26
§ 27.05	Liquidation Issues . . . . .	27-27
	[1] Securitization Company Liquidation Issues . . . . .	27-27
	[2] FCT Liquidation Issues . . . . .	27-27
§ 27.06	Tax and Accounting Issues . . . . .	27-28
	[1] Tax Treatment of the FCT . . . . .	27-28
	[a] Tax Treatment of FCT Activities . . . . .	27-28
	[i] Corporate Tax . . . . .	27-28
	[ii] Value Added Tax (“VAT”) . . . . .	27-28
	[iii] Registration Fees . . . . .	27-28
	[b] Tax Treatment of FCT Unit-Holders . . . . .	27-29
	[i] Private individuals . . . . .	27-29
	[ii] Legal Entities . . . . .	27-30
	[iii] Non Profit Organizations . . . . .	27-30
	[2] Accounting Principles . . . . .	27-30
	[a] Accounting of Securitization Transactions . . . . .	27-30
	[i] French Regulations Test: Factual “Control” over the SE . . . . .	27-31
	[ii] European “IAS 39” Test: Factual “Control” over the SE . . . . .	27-33
	[b] Accounting of the FCT . . . . .	27-33

**CHAPTER 27A****Overview of the Legal Framework of  
Securitization in Japan**

§ 27A.01	Introduction . . . . .	27A-2
§ 27A.02	Outline of the Major Schemes . . . . .	27A-4
	[1] Trust Scheme . . . . .	27A-4

**TABLE OF CONTENTS**

lxxiii

	[2] SPC Scheme.....	27A-5
	[a] Outline.....	27A-5
	[b] Typical SPC Forms.....	27A-5
	[i] Kabushiki Kaisha (KK).....	27A-5
	[ii] Godo Kaisha (GK).....	27A-5
	[iii] Tokutei Mokuteki Kaisha (TMK).....	27A-6
§ 27A.03	Major Legislative Framework and Regulations.....	27A-8
	[1] Legislative Framework on the Transfer of Receivables and its Perfection.....	27A-8
	[2] Major Legislative Framework Regarding Trusts and Regulations Imposed on Trustees.....	27A-9
	[a] Important Legislative Framework on Trusts in Relation to Securitization.....	27A-9
	[b] Regulations Imposed on Trustees...	27A-10
	[3] Regulations Under the Financial Instruments and Exchange Act.....	27A-11
	[a] Outline.....	27A-11
	[b] Disclosure.....	27A-11
	[c] Regulation Imposed on Financial Instruments Business Operators...	27A-13
	[i] Registration Required for Conducting Financial Instruments Related Business.....	27A-13
	[ii] Regulation Imposed on Financial Instruments Business Operators.....	27A-14
	[4] Current Revision of the Capital Adequacy Ratio Regulations.....	27A-16
§ 27A.04	Bankruptcy Remoteness, True Sale and Other Important Issues.....	27A-17
	[1] Outline.....	27A-17
	[2] True Sale.....	27A-17
	[3] Avoidance by the Administrator and Rescission by the Court.....	27A-19
	[4] Preventive Measures for the Risks of SPCs Becoming Insolvent...	27A-20
	[a] Outline.....	27A-20
	[b] Preventive Measures for the Occurrence of Insolvency.....	27A-20

**SECURITIZATIONS**

[c]	Preventive Measures for the Commencement of Insolvency Proceedings . . . . .	27A-21
[i]	Non-Petition Clauses . . . . .	27A-21
[ii]	Limited-Recourse Clauses . . . . .	27A-22
[iii]	Choice of Form of Entity for SPCs . . . . .	27A-22

**CHAPTER 28****Whole Business Securitization**

§ 28.01	Introduction . . . . .	28-2
§ 28.02	Background . . . . .	28-3
§ 28.03	Legal and Economic Structure . . . . .	28-5
	[1] Structuring Strategies . . . . .	28-5
	[2] Role of Issuer and Guarantors . . . . .	28-5
	[3] Role of Manager . . . . .	28-6
	[4] Control of Intellectual Property . . . . .	28-7
§ 28.04	Legal Issues . . . . .	28-10
	[1] Bankruptcy . . . . .	28-10
	[2] Exposure of Issuer . . . . .	28-12
	[3] Corporate Governance Issues . . . . .	28-12
	[4] Taxation of Issuer . . . . .	28-13
	[5] Risk Retention . . . . .	28-13
§ 28.05	Disclosure Matters . . . . .	28-14
§ 28.06	Recent Developments; New Directions . . . . .	28-16

**CHAPTER 29****Canadian Issues on Securitization**

§ 29.01	Introduction . . . . .	29-2
	[1] Dual Legal Traditions . . . . .	29-2
	[2] Federal System . . . . .	29-3
	[3] Regulators . . . . .	29-3
	[a] Canadian Securities Administrators . . . . .	29-3
	[b] Office of the Superintendent of Financial Institutions . . . . .	29-4
§ 29.02	Structuring Issues . . . . .	29-5
	[1] The Insolvency Legislation Landscape . . . . .	29-5
	[2] True Sale . . . . .	29-6
	[a] Civil Code of Québec . . . . .	29-6
	[b] Common Law . . . . .	29-7
	[3] Substantive Consolidation . . . . .	29-7



## TABLE OF CONTENTS

lxxv

§ 29.03	Special Statutory and Regulatory Issues . . . . .	29-9
	[1] Interest . . . . .	29-9
	[2] Laws Respecting the Collection of Debts . . . . .	29-10
	[3] Financial Administration Act . . . . .	29-10
	[4] OSFI Guideline B-5 . . . . .	29-10
	[5] Securities Regulation . . . . .	29-10
§ 29.04	Cross-Border Issues . . . . .	29-13
	[1] Bank Act . . . . .	29-13
	[2] Income Tax Act . . . . .	29-13
§ 29.05	Rating Agencies . . . . .	29-14
§ 29.06	Conclusion . . . . .	29-15

## CHAPTER 29A

### Securitization in India

§ 29A.01	Introduction . . . . .	29A-2
§ 29A.02	Regulatory Framework . . . . .	29A-5
§ 29A.03	Securitization of Standard Assets . . . . .	29A-6
	[1] Proscription of Certain Assets from Securitization . . . . .	29A-6
	[2] Minimum Holding Period . . . . .	29A-6
	[3] Minimum Retention Requirement . . . . .	29A-7
	[4] Other Obligations on the Originator . . . . .	29A-7
	[5] Issuance and Listing Requirements . . . . .	29A-8
	[6] Derecognition of the Transferred Assets for the Purpose of Capital Adequacy . . . . .	29A-8
	[7] STC Securitizations . . . . .	29A-8
§ 29A.04	Transfer of Loan Exposures . . . . .	29A-10
	[1] General Conditions on All Loan Transfers . . . . .	29A-10
	[2] Transfer of Loans Not in Default . . . . .	29A-11
	[a] General . . . . .	29A-11
	[b] Minimum Holding Period and Minimum Retention Requirement . . . . .	29A-11
	[3] Transfer of Stressed Loans . . . . .	29A-12
	[4] Securitization of Stressed Assets . . . . .	29A-12
	[a] Surplus Realizations . . . . .	29A-14
	[b] Recovery Proceedings . . . . .	29A-14
§ 29A.05	Factoring . . . . .	29A-16
	[1] Asset Classification and Provisioning . . . . .	29A-17

**SECURITIZATIONS**

	[2] Exposure Norms . . . . .	29A-17
	[3] Factoring by Banks . . . . .	29A-18
	[4] Factoring and Securitization . . . . .	29A-18
§ 29A.06	Other Issues to Consider . . . . .	29A-20
	[1] Stamp Duty . . . . .	29A-20
	[a] Deeds of Assignment Not Falling Under the Securitization Act . . . . .	29A-20
	[b] Assignment Deed Under the Securitization Act . . . . .	29A-20
	[c] Pass-Through Certificates (PTC) . . . . .	29A-21
	[2] Income Tax . . . . .	29A-21
	[3] Goods and Services Tax . . . . .	29A-21
	[4] Impact of the Transfer Directions on Covered Bond Transactions . . . . .	29A-22
	[5] Foreign Investment . . . . .	29A-24
	[a] Foreign Direct Investment in ARCs . . . . .	29A-24
	[b] Foreign Investment in Security Receipts for Stressed Assets . . . . .	29A-24
	[c] Foreign Investment in the PTC Issued for Securitization of the Standard Assets . . . . .	29A-24
§ 29A.07	Looking Forward . . . . .	29A-26

**CHAPTER 30****Securitizations in Brazil**

§ 30.01	Overview . . . . .	30-2
§ 30.02	Securitization of Receivables . . . . .	30-5
	[1] Introduction . . . . .	30-5
	[2] Organization of an Special Purpose Entity . . . . .	30-5
	[a] General Aspects of the Transaction . . . . .	30-5
	[b] Character of SPEs . . . . .	30-5
	[c] Procedures for Organization of the SPE . . . . .	30-6
	[d] Debentures . . . . .	30-6
	[e] Assignment of Credit . . . . .	30-8
	[f] Control of the SPE . . . . .	30-8
	[3] Conclusion . . . . .	30-9
§ 30.03	Receivable Funds . . . . .	30-10

**TABLE OF CONTENTS**

lxxvii

	[1]	Standard Receivable Fund.....	30-10
	[a]	General Aspects.....	30-10
	[b]	Operation and Distribution Registration .....	30-12
	[2]	Non-Standardized Credit Rights Investment Fund.....	30-13
	[a]	General Aspects.....	30-13
	[b]	Operation and Distribution Registration .....	30-14
§ 30.04		Real Estate Credit Securitization.....	30-16
	[1]	General Aspects .....	30-16
	[2]	Distribution and Operation .....	30-16
	[3]	Segregation Mechanism.....	30-17
	[4]	Registration of Publicly-Held Company and Registration of Public Offering of CRIs .....	30-18
§ 30.05		Real Estate Investment Funds .....	30-20
	[1]	General Aspects .....	30-20
	[2]	Distribution and Operation .....	30-20
	[a]	Characteristics .....	30-20
	[b]	Establishment of the Fund .....	30-20
	[c]	Issue and Placement of Shares and Trading in Shares.....	30-21
	[d]	Example.....	30-22
§ 30.06		Tax Issues for Securitization in Brazil .....	30-24
	[1]	Special Purpose Entity.....	30-24
	[a]	Corporate Income Tax (“IRPJ”) and Social Contribution on Profits (“CSL”) .....	30-24
	[b]	Other Taxes .....	30-26
	[c]	Chart.....	30-26
	[2]	Securitization Companies.....	30-27
	[a]	IRPJ and CSL .....	30-27
	[b]	Contribution to PIS and COFINS... ..	30-27
	[c]	Chart.....	30-27
	[3]	Securitization by Means of an FIDC ... ..	30-28
	[a]	Income Tax .....	30-28
	[b]	Social Contribution to PIS and COFINS .....	30-29
	[c]	Tax on Financial Transactions (“IOF”).....	30-29
	[d]	Chart.....	30-30
	[4]	Securitization by Means of a FII .....	30-31
	[a]	Income Tax .....	30-31

**SECURITIZATIONS**

	[b] Social Contribution to PIS and COFINS .....	30-32
	[c] Tax on Financial Transactions ....	30-32
	[d] Chart.....	30-33
	[5] Tax Treatment of Investment in Real Estate-Backed Securities (CRI) .....	30-33
	[a] Income Tax .....	30-33
	[b] Social Contribution to PIS and COFINS .....	30-34
	[c] Tax on Financial Transactions ....	30-34
	[d] Chart.....	30-35
§ 30.07	Liquidation/Bankruptcy Considerations.....	30-36
	[1] General Provisions.....	30-36
	[2] Special Purpose Companies.....	30-37
	[3] Funds .....	30-37

**CHAPTER 30A****Turkish Issues on Securitization**

§ 30A.01	Introduction.....	30A-2
§ 30A.02	Legal Framework .....	30A-3
	[1] Regulators.....	30A-3
	[2] Onshore.....	30A-3
	[3] Offshore .....	30A-4
§ 30A.03	Securitization Structure.....	30A-5
	[1] Establishment of Issuer .....	30A-5
	[a] Fund.....	30A-5
	[b] Mortgage Finance Institution ....	30A-6
	[2] Asset Pool.....	30A-6
	[a] ABS Issuances.....	30A-7
	[b] MBS Issuances .....	30A-7
	[c] Other Legal Requirements .....	30A-8
	[3] Offshore Securitizations.....	30A-9
§ 30A.04	Statutory and Structural Issues.....	30A-10
	[1] True Sale .....	30A-10
	[2] Insolvency and Bankruptcy Remoteness.....	30A-11
	[3] Notification to Underlying Obligors....	30A-13
	[4] Special Statutory Issues.....	30A-13
	[a] Collateral Attached to the Transferred Assets .....	30A-13
	[b] Revolving Structure.....	30A-14
	[c] Risk Undertaking.....	30A-14
	[d] Data Protection .....	30A-14

## TABLE OF CONTENTS

lxxix

§ 30A.05	Tax Issues . . . . .	30A-15
§ 30A.06	Rating Agencies . . . . .	30A-16

### CHAPTER 31

#### Warehouse Lending to Fintech Originators

§ 31.01	Introduction to FinTech's Asset Origination . . . . .	31-3
	[1] Basic Structures . . . . .	31-4
	[2] Consumer vs. Commercial. . . . .	31-4
	[3] Financing Originations. . . . .	31-5
	[a] Balance Sheet Financing . . . . .	31-6
	[b] Online Investor Marketplace. . . . .	31-7
	[c] Loan Purchase Agreements and Loan Servicing Agreements . . . . .	31-7
	[d] Warehouse Lending . . . . .	31-8
§ 31.02	Structure of Warehouse Lending. . . . .	31-9
	[1] Borrower. . . . .	31-9
	[a] Protective Features. . . . .	31-9
	[2] Principal . . . . .	31-10
	[a] Revolving Facilities . . . . .	31-10
	[b] Fully-Drawn Term Facilities. . . . .	31-11
	[c] Accordion Facilities . . . . .	31-11
	[d] Committed vs. Uncommitted . . . . .	31-11
	[e] Borrowing Base and Advance Rate . . . . .	31-12
	[i] Use of Mezzanine Debt . . . . .	31-12
	[f] Prepayment. . . . .	31-13
	[i] Voluntary . . . . .	31-13
	[ii] Mandatory . . . . .	31-14
	[iii] Revolving Period vs. No-Call Period. . . . .	31-14
	[3] Interest . . . . .	31-14
	[a] LIBOR Transition to SOFIR. . . . .	31-14
	[b] Spread . . . . .	31-15
	[c] Upfront Fees. . . . .	31-15
	[4] Use of Proceeds . . . . .	31-15
	[a] Specific vs. General Use of Proceeds . . . . .	31-16
	[b] Proceeds Applied to Purchase Assets. . . . .	31-16
	[c] Compliance and Enforcement. . . . .	31-16
	[5] Maturity . . . . .	31-16
	[a] Bullet Principal Repayment . . . . .	31-17
	[b] Amortizing Prepayment . . . . .	31-17
	[c] Typical Waterfall Features. . . . .	31-17

## SECURITIZATIONS

[6]	Collateral . . . . .	31-18
	[a] Eligible Assets . . . . .	31-18
	[i] Substitution of Collateral . . . . .	31-19
	[b] Ineligible Assets . . . . .	31-19
	[c] Lien Practice . . . . .	31-19
	[d] Deposit Account Control Agreements . . . . .	31-20
	[e] All-Assets Liens vs. Tailored Collateral . . . . .	31-20
	[f] Guarantors and Guarantees . . . . .	31-20
	[i] Typical Varieties . . . . .	31-20
	[ii] “Bad Boy” vs. Performance . . . . .	31-21
	[iii] Liens on Guarantors . . . . .	31-21
	[iv] Enforcing Guarantees . . . . .	31-21
[7]	Events of Default . . . . .	31-22
	[a] Remedies Upon Event of Default . . . . .	31-22
	[b] Early Amortization Provisions and Early Wind-Down Provisions . . . . .	31-22
	[c] Cure Rights and Cure Periods . . . . .	31-23
[8]	Delinquent and Charged Off Loans . . . . .	31-23
[9]	Term . . . . .	31-23
	[a] Generally . . . . .	31-23
	[b] Short-Term Lending and Prefunding Facilities . . . . .	31-23
[10]	Termination . . . . .	31-24
	[a] For Cause . . . . .	31-24
	[b] Not for Cause . . . . .	31-24
	[c] Effect of Termination; Survival . . . . .	31-24
[11]	Representations and Warranties . . . . .	31-25
[12]	Covenants . . . . .	31-25
	[a] Affirmative Covenants . . . . .	31-25
	[b] Negative Covenants . . . . .	31-26
	[c] Financial Covenants . . . . .	31-26
[13]	Legal Opinions . . . . .	31-27
	[a] Typical Opinions . . . . .	31-27
	[b] Typical Qualifications and Carve-Outs . . . . .	31-27
[14]	Fees and Expenses . . . . .	31-28
	[a] Good Faith Deposit; Counsel Costs and Caps . . . . .	31-28
[15]	Amendments and Waivers . . . . .	31-29
[16]	True Sale and Non-Consolidation . . . . .	31-29
	[a] True Sale . . . . .	31-29
	[b] Non-Consolidation . . . . .	31-30

## TABLE OF CONTENTS

lxxxii

§ 31.03	Servicing Arrangements . . . . .	31-31
	[1] Servicing Rights . . . . .	31-31
	[2] Standard of Care . . . . .	31-31
	[3] Back-up Servicing Rights . . . . .	31-31
	[a] Hot Backup . . . . .	31-32
	[b] Limited Backup . . . . .	
	[4] Servicer Events of Default/Replacement Triggers . . . . .	31-32
§ 31.04	Closing . . . . .	31-33
	[1] Documentation . . . . .	31-33
	[2] Process . . . . .	31-36

## CHAPTER 32

### Life Settlement Securitization

§ 32.01	Overview . . . . .	32-1
§ 32.02	Certain Issues Impacting Life Settlement Securitization . . . . .	32-4
	[1] Longevity Risk . . . . .	32-4
	[2] Cost of Insurance . . . . .	32-5
	[3] Insurance Company Financial Strength . . . . .	32-6
	[4] Policy Origination . . . . .	32-7
	[5] Life Settlement Origination . . . . .	32-8
	[6] Servicing . . . . .	32-9
§ 32.03	SEC Regulation . . . . .	32-10
§ 32.04	Insurable Interest Litigation and Life Settlements . . . . .	32-13
§ 32.05	Conclusion . . . . .	32-17
§ 32.06	Appendix: Life Settlements Task Force Report to the SEC . . . . .	32-18

## CHAPTER 33

### Tax Lien Securitization: Opportunities and Risks

§ 33.01	Introduction . . . . .	33-1
§ 33.02	Basics of a Tax Lien Securitization . . . . .	33-3
§ 33.03	Notable Tax Lien Securitization Activity . . . . .	33-6
§ 33.04	Issues Impacting Tax Lien Securitization . . . . .	33-7
	[1] Distressed Property and Collections . . . . .	33-7
	[2] Bankruptcy and Interest Rate “Cram-Downs” . . . . .	33-10
§ 33.05	Other Risks: Conflicts of Interest, Enforcement Actions and Investigations . . . . .	33-12
§ 33.06	Summary . . . . .	33-14

## SECURITIZATIONS

## CHAPTER 34

U.S. Supreme Court Revisits *Chevron* Deference

## CHAPTER 35

[Reserved]

## CHAPTER 36

## The New Oil and Gas Securitizations

§ 36.01	Introduction . . . . .	36-2
§ 36.02	Oil and Gas Structures and Cash Flows . . . . .	36-5
	[1] Definitions of Rights and Interests in Oil and Gas Wells . . . . .	36-5
	[2] Joint Operations and Cash Flows . . . . .	36-5
	[3] Reserve Reports . . . . .	36-8
§ 36.03	Structure of Wellbore Working Interest Securitizations . . . . .	36-9
	[1] The Collateral: Working Interests in PDP Wellbores . . . . .	36-11
	[2] Transfer Agreements: Originator Transferring Wellbore Working Interests to Issuer . . . . .	36-11
	[a] Title and Environmental Defects . . . . .	36-12
	[b] Representations, Warranties and Indemnities . . . . .	36-13
	[c] Transfer Instruments, Consents, and Preferential Rights Waivers . . . . .	36-14
	[d] Assumption and Retention of Wellbore Interest Liabilities . . . . .	36-15
	[e] Limited Parent Company Guarantee . . . . .	36-15
	[3] Note Purchase Agreement: Investors and Issuer . . . . .	36-15
	[4] Indenture: Indenture Trustee; Cash Flows; Ongoing Covenants . . . . .	36-16
	[a] Cash Flows . . . . .	36-16
	[i] Issuer Revenues . . . . .	36-16
	[ii] Payment Waterfall from Issuer to Investors . . . . .	36-17
	[b] Covenants Specific to Oil and Gas Securitizations . . . . .	36-18



## TABLE OF CONTENTS

lxxxiii

	[5] Security Interests and Bankruptcy Considerations . . . . .	36-18
	[a] Security Interest . . . . .	36-18
	[b] Bankruptcy Considerations and Opinions . . . . .	36-19
	[6] Managing the Issuer: Management Services Agreement and Back-Up Management Agreement . . . . .	36-20
	[a] Primary Manager: Management Services Agreement . . . . .	36-20
	[b] Back-Up Manager: Back-Up Management Agreement . . . . .	36-20
	[7] Operating the Wellbore Interests: Joint Operating Agreements . . . . .	36-21
	[8] Ratings Agencies . . . . .	36-22
§ 36.04	Commercial Terms and Ratings Agency Evaluations . . . . .	36-23
	[1] Key Commercial Terms of Recent Oil and Gas Securitizations . . . . .	36-23
	[2] Ratings Agency Evaluations . . . . .	36-24
	[a] Diversification . . . . .	36-25
	[b] Maturity of the Assets . . . . .	36-25
	[c] Quality of Operator . . . . .	36-26
	[d] Hedging Package and Stress Testing . . . . .	36-26
	[e] Structural Protections . . . . .	36-26
§ 36.05	Conclusion . . . . .	36-28

## Appendices

<b>APPENDIX A:</b>	SEC Rule 192: Prohibition Against Conflicts of Interest in Certain Securitizations . . . . .	A-1
<b>APPENDIX B:</b>	Federal Reserve Trust Account Rule: Beneficial Ownership Reporting Requirements, 31 C.F.R. 1010 . . . . .	B-1
<b>APPENDIX C:</b>	Corporate Transparency Act: Establishing Beneficial Ownership Information Reporting Requirements, H. R. 6395 . . . . .	C-1
<b>INDEX</b>	. . . . .	I-1