

Asset-backed Securities: Legal Tax Accounting and Regulatory Developments



Banking
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Presented by Vinod Kothari

Why should you participate?

Asset-backed securities are no more uncommon - they have become an integral part of the funding schemes of most financial intermediaries and corporates, as well as for investment portfolios of any fixed income investor. Asset-backed securities are growing in their size as well as depth. From traditional asset classes such as residential mortgages and auto loans, CDOs and CDO-squares are trying to create highly leveraged alternative investment and arbitraging tools, operating revenue or whole business transactions are replacing traditional corporate borrowing tools with new-look structured finance products, and intellectual property and future-flows based transactions seem to be blurring the line of distinction between borrowings and asset-sales.

The massive upsurge in securitisation has posed several legal, accounting and taxation issues. As is obvious, in a go-go business environment, there is less regard for such issues than warranted.

This workshop is an attempt to provide comprehensive inputs on the legal, tax, accounting and regulatory capital issues related to asset-backed securities.

The legal structure of a securitisation deal is key to its robustness. The asset-backed ratings are based on bankruptcy remote structuring. Taxation is quite often an overlooked risk in securitisation transactions - but that may clearly be perilous.

Changes in IAS 39 and adoption of IFRS by most European jurisdictions has made off-balance sheet accounting a very hot and controversial issue. We intend to explore, at length, the nuances of IAS 39 and practical guide to application.

Regulatory capital relief, including Basle II capital standards relating to securitisation, form a significant part of bankers' motive to strive for securitisation deals, both cash and synthetic transactions. Basle II has sought to change the way regulatory capital is computed for securitized assets - and the new approach is quite complex in case of IRB computation.

Within the above topical issues, the workshop will deal with both cash structures and synthetic structures.

Who should attend

Law firms, legal departments of securitisation firms and investment banks, investors, and the like
Accounting experts, accounting practitioners · Rating agencies
Risk management and operational risk teams from banks · Banking regulators

Date: 19 - 20 January 2006
Venue: Blue Valley Golf Estate, Midrand

Brit Training
Central Park · 13 Esdoring Street · Highveld Techno Park · Centurion · South Africa
Tel: 27 (12) 665-3555 · Fax: 27 (12) 665-3140

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About your workshop leader



Vinod Kothari is internationally recognized as author, trainer and expert on specialized financial subjects, Internationally recognised as author, trainer and consultant on specialised financial subjects, viz., securitisation, credit derivatives, accounting for financial instruments, etc.. As such, he lectures all over the world. The locations where he has lectured on these subjects include London, Milan, Singapore, Hong Kong, Sydney, Dubai, Colombia (South America), South Africa, Malaysia, Jordan, Egypt, Sri Lanka, Bangladesh, etc., besides almost every important location in India. Forthcoming event locations include New York.

Author of Books

- **Lease Financing and Hire purchase** (4th edition, 1996): This book, first published in 1985, is widely recognised as the bible on leasing in the continent and has been the most popular text on the subject for last 15 years. The book runs over 2000 pages and has elaborate contents on leasing, hire purchase and similar credit agreements.
- **Securitisation: The Financial Instrument of the New Millennium**, Second edition 2003: Running over approximately 900 pages, this is an internationally-read publication which quickly ran out of print and is now undergoing comprehensive revision for a new edition. The book is read in some 30 countries all over the World.
- **Credit Derivatives and Synthetic Securitisation**, 2002 : This is one of the very few comprehensive texts on credit derivatives and is read all over the World.
- **Securitisation, Asset Reconstruction and Enforcement of Security Interests**, 2003 edition: This book is a detailed commentary on the law by the same name enacted in India. Besides a thorough and incisive commentary on the law, the book contains generic chapters dealing in detail with the law of enforcement of security interests in global context.

Articles

- Vinod Kothari's articles on asset-based finance, securitisation etc. have appeared in several national and international journals including Duke Journal of Comparative International Law (USA), US Banker (USA), Exportrader (Spain), Trade and Forfeiting Review (UK), Journal of International Banking Law and Regulation (UK), Equipment Finance Journal (USA), Monitor daily (USA), Analyst (India), etc.
- Vinod Kothari also contributes to Euromoney's yearbooks on leasing and securitisation.

Lecturing

- Regular speaker at professional institutes.
- Visiting faculty at Indian Institute of Management, Joka, Calcutta for several years. Currently, offering a course on important topics in finance and taxation.
- Guest faculty at National University for Juridical Sciences: the subject taught here was insolvency and credit interest enforcement laws in India and other countries. The course included a comparative study of the insolvency and creditors' rights in USA, UK and Australia.

Positions

Vinod Kothari is currently retained by the Asian Development Bank, Manila for two important projects: to advise the Government of India on reforming secured lending law in India; and to develop securitisation-related legal framework in the Asian region.

Vinod Kothari is the Director of Association of Leasing and Financial Services Cos., a body of over 500 top leasing companies in India and is editor of its Newsletter Fin-n-lease.

Vinod Kothari is the former Chairman of the Institute of Company Secretaries of India.

Vinod Kothari is the Executive Director of the Asian Securitisation Forum

Awards

In 1987, a voluntary organisation of Calcutta chose him as the Outstanding Young Person of Calcutta in the field of Finance and Taxation. Vinod Kothari won several academic awards.

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Day 1

Session 1 : Basic legal issues

Assignment of receivables - legal complications in assignments in Anglo-Saxon systems, Roman-Dutch systems, etc. - Legal structures for securitisation in different markets - legal structures for securitisation in various countries. Models of securitisation law in some countries: Italian law, Korean law, Japanese law. US article 9 of UCC and securitisation transactions. Commingling risk; set-off risk; legal issues in residential and commercial mortgage backed transactions. Legal issues in revolving transactions. Legal issues future flows transactions.

Session 2 : True sale and bankruptcy remoteness

Isolation and asset-backed rating in securitisation transactions. Concept of "true sale" - why "true", and what is it that might make it "not true"? Case law in the USA, UK, Canada and elsewhere. Elements that make or mar a true sale. Recharacterisation - what are the consequences. What makes a special purpose vehicle bankruptcy remote - creation of bankruptcy-remote securitisation - criteria and preconditions for bankruptcy remote entities - consolidation risk.

Session 3 : Secured loan based structures

The basis of secured loan structures - enforcement of security interests in bankruptcy. Legal position in different countries. UK Enterprise law. Fixed and floating charges as the basis for secured loan structures. Whole business transactions.

Session 4 : Legal issues in synthetic transactions

Legal issues relating to derivatives - enforceability of derivatives. Decision of US and UK courts on credit derivatives.

Session 5 : Documentation for securitisation transactions

Assignment agreement/transfer deed. Pooling and servicing agreement. Trust documentation.

Session 6 : Regulatory issues

Regulatory issues in securitization - securitization and capital adequacy - recent bank failures in the USA and regulatory concerns - BIS II and securitisation. Rating-based capital norms. Regulations in some countries. Basle II and credit derivatives. Recent FDIC regulations on securitisation and credit derivatives in the USA - does it reflect the shape of regulation to come? Regulatory capital in case of synthetic transactions - residual risk in case of credit derivatives.

Computation of risk-based capital under Basle II - standard approach and IRB approach. Computation of capital in case of ABCP conduits. Treatment of credit enhancements and liquidity facilities.

Session 7 : Economic Capital

Economic capital - concept and computation. Models for estimation of economic capital. Impact of cash and synthetic securitisation on economic capital computation.

Day 2

Session 1 : Taxation of securitisation transactions

Tax neutrality as a key condition for efficient securitisation deals. SPEs as mini-corporations and the significance of debt-equity distinction. Key principles of originator taxation and taxation of gains on sale. Taxation of servicing fees and residual returns.

Debt versus equity - fundamental differences. Taxation of SPEs. Tax neutral SPEs. Tax-neutral structures in several countries - US REMICs and FASITs. Italian SPEs.

Taxation of investors. Withholding taxes and other relevant issues.

Session 2 : Taxation of synthetic transactions

Key issues in derivatives taxation.

Session 3 : Basic Accounting issues

Accounting for securitisation - off-balance sheet versus on-balance sheet treatment - new IAS 39, SFAS 140 and FRS 5. Motivations for off-balance sheet finance. Preconditions for off-balance sheet accounting under the new IAS 39. Continuing involvement approach what it means and practical applications. Preconditions for off-balance sheet treatment under FAS 140 - surrender of control Concept of Qualifying special purpose entity.

Session 4 : Components approach and gain-on-sale computation

Understanding the components approach. Identification and Valuation of the components: expected cashflows approach and discounting approach. Illustration of each approach with practical spreadsheet examples. Allocation of carrying value to the components. Valuation of assets/liabilities arising out of securitisation. Example and exercises on computation of gain on sale

Session 5 : SPV accounting, consolidation, SIC 12 and FIN 46

Accounting for the SPV - US Variable interest entity rules. IASB's SIC12 and consolidation practices in other countries. Accounting for pass-through SPEs. Practical exercises

Accounting for investors: FAS 115/FAS133 and IAS 39 rules. EITF 99-20 on US credit and prepayment sensitive cashflows accounting. Accounting for embedded derivatives. Practical exercises

Session 6: Accounting for synthetic transactions

Accounting for synthetic transactions - basics of derivatives accounting. Financial instruments - accounting for HTM, AFS and Trading assets. Mark to market valuation rules. Preconditions for hedging treatment. Illustration of the fair valuation and accounting under hedging and non-hedging approaches.

Brit Training Delegate Registration Form

Asset-backed Securities: Legal Tax Accounting and Regulatory Developments

Contact Details:
Tel: 27 (12) 665-3555 • Fax: 27 (12) 665-3140

Physical Address: Central Park 13 Esdoring Street Highveld Techno Park Centurion South Africa	Postal Address: PO Box 12620 Clubview 0014 South Africa
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Workshop Venue and Date

Code: T270

Venue:
Blue Valley Golf Estate
Midrand

Dates:
19 - 20 January 2006

Tel: 27 (12) 346-7328

Please complete Registration Form and fax back to:

Account Executive: Charles Winton
On Fax: 27 (12) 665-3140

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A 10% group discount applies if three or more delegates register from the same organisation.

Confirmation Details:
If you do not receive a letter outlining participation details one week prior to the event, please contact the event coordinator on 27 (12) 665-3555.

Cancellations and Transfers:
Delegates unable to attend the event may send a substitute delegate to the event. Cancellations received at this office in writing 15 working days before the event will qualify for a 50% refund. Cancellations received at this office in writing with less than 15 working days' notice of the event will carry full liability of payment.

Programme and speakers are confirmed at time of going to press. However, Brit Training reserves the right to alter this programme without notice.

Event Fees per Delegate

REGISTRATION WILL BE CONFIRMED ON RECEIPT OF SIGNED REGISTRATION FORM.

Price (exclusive of 14% VAT):

R8 495,00 (excl VAT) x _____ persons = R_____

Early Bird Price: Book and Pay by 1 August 2005

R7 995,00 (excl VAT) x _____ persons = R_____

Travel & Hotel Bookings

If you require any assistance with booking for travel and hotel accommodation for the course, please contact our in-house travel organisation, The Travel Emporium.
 Contact person: Samm Thompson
 Tel no.: 27 (12) 665-4967
 Fax no.: 27 (12) 665-1475; or
 E-mail: samt.etravel@galileosa.co.za



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