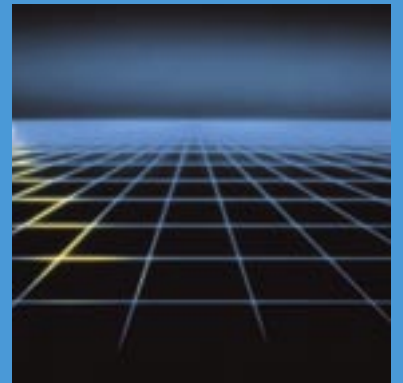


Structuring securitisation transactions in the Netherlands

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Contents

Part I: Securitisation in general	4
1.1. Introduction	4
1.2. Market overview and trends	5
1.3. What is securitisation?	6
1.4. Benefits of securitisation	7
1.5. Types of transaction	8
1.6. Securitisation players	8
1.7. Types of credit enhancement	9
Part II: The Netherlands – securitisation in practice	10
2.1. Introduction	10
2.2. Phases of the securitisation process and our servicing offerings	12
2.2.1. Feasibility study phase	12
2.2.2. Operations/infrastructure review phase	12
2.2.3. Collateral analysis phase	13
2.2.4. Preparation for rating agencies review	14
2.2.5. Structuring phase	14
2.2.6. Pre-closing phase	14
2.2.7. Post-closing phase	14
2.3. Legal forms of securitisation vehicles	14
2.4. Taxation in securitisation	14
2.4.1. Corporate income tax	15
2.4.2. Withholding taxes – outward	15
2.4.3. Withholding taxes – inward	16
2.4.4. Taxation of note holders	16
2.4.5. Dutch VAT treatment	16
2.4.6. Stamp duty and capital duty	17
2.5. Accounting and audit	17
2.6. Laws and regulations	17
2.7. Risks on securitisation vehicles	17
Part III: Contacts	19

Part I: Securitisation in general

1.1. Introduction

Today, securitisation is the funding and risk transfer method of choice for an increasing number of issuers and the largest growing contribution to the global capital markets.

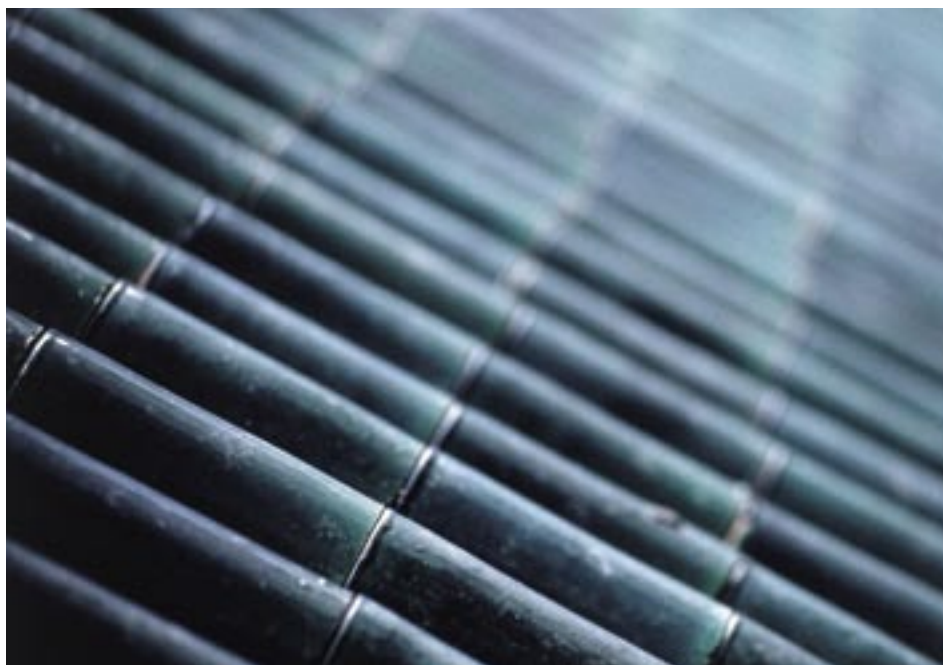
Though the securitisation transaction as it is known today was made popular in the US, non-US transactions are becoming an increasing share of the overall securitisation market. Securitisation may be of interest to any large corporate that owns suitable financial assets, be it a pool of debts or discrete revenue streams.

For the banking system, securitisation has allowed for lower solvability ratios and risks linked to financial sectors and regions; for companies and households, it has allowed for better financing conditions.

As in most countries, the Dutch securitisation market has historically started to develop through Mortgage-Backed Securities (MBS) and other types of financial receivables.

As the securitisation market grows and becomes more sophisticated, the types of securitised asset are broadened into non-financial types of asset and future cash flow.

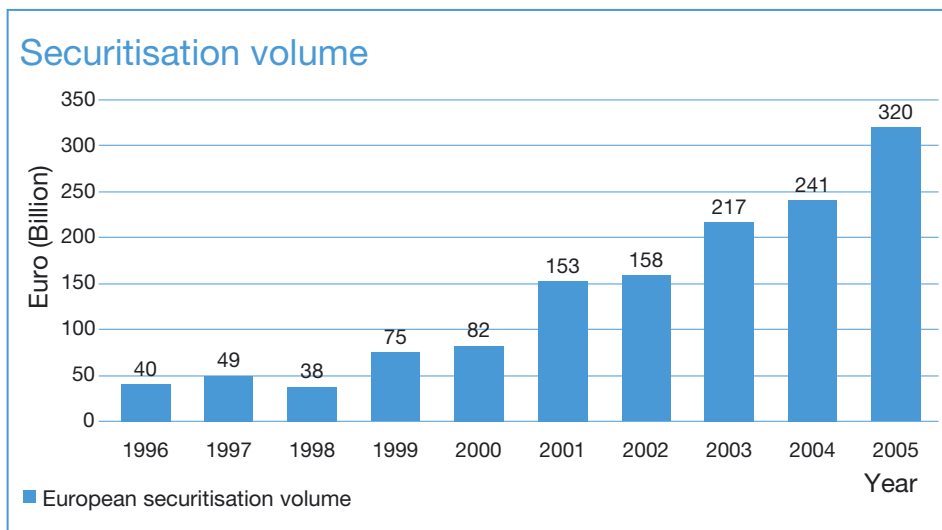
Examples of securitised assets	
• Aircraft Leases	• Manufactured Housing Contracts
• Auto Loans (Prime and Sub-prime)	• Mortgages (Residential and Commercial)
• Auto Leases	• Railcar Leases
• Boat Loans	• Real Estate
• Credit Card Receivables	• Recreational Vehicle Loans
• Train wagons Leases	• Royalty Streams
• Equipment Leases	• Stranded Utility Costs
• Home Equity Loans	• Trade Receivables
• Marine Shipping Containers and Chassis Leases	• Truck Loans





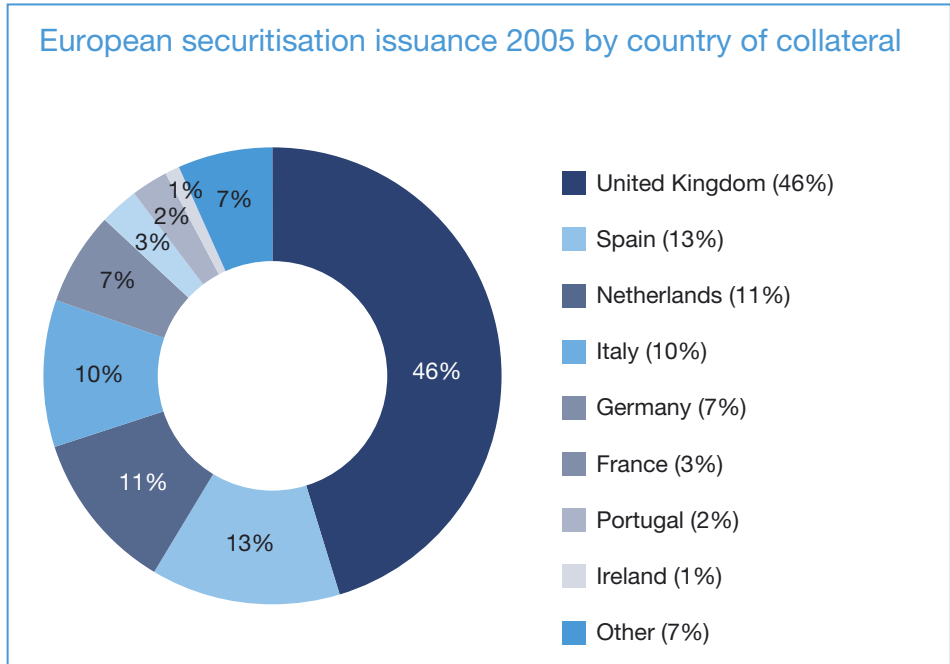
1.2. Market overview and trends

The European securitisation market grew by 32.8% in 2005, reaching a new high of EUR 320 billion, compared to EUR 241 billion in 2004. Economic recovery and lower levels of credit defaults have raised investor confidence in this market.



Source: Dealogic, Thomson Financial, J.P. Morgan Securities Inc., Structured Finance International

The securitisation volume in Europe can be broken down into individual countries as follows:



Source: Dealogic, Thomson Financial, J.P. Morgan Securities Inc., Structured Finance International

1.3. What is securitisation?

A securitisation is a type of structured financing in which a pool of financial assets (such as car finance loans, home or commercial mortgages, corporate loans, royalties, leases, non-performing receivables, and contractually pledged operating revenues) is transferred to a “special purpose vehicle” (SPV) that then issues debt, which is backed solely by the assets transferred and payments derived from those assets. The most common collateral types in Europe include receivables (such as lease receivables, mortgages, trade receivables and property rent), CDOs, auto loans, credit card receivables and consumer loans.

The transfer is structured to isolate the assets from credit exposure for the securitisation sponsor and to, potentially, remove the assets from the sponsor’s balance sheet. Proceeds of the transfer may be used to originate new assets, to repay outstanding debts, or for any

As to the type of investors in securitisation bonds at present, there is a concentration in investment and insurance companies as a certain level of expertise is required. However, as the market develops, other types of investor tend to be attracted by the relatively higher returns and collateral guarantees.

Investment Companies	43%
Insurance Companies	22%
Asset Management	16%
Federal/State/Local Government	5%
Corporations	4%
Mutual Funds	3%
Pension Funds	2%
Other	5%

Source: Moody’s





other allowable purpose. The valuation of the portfolio of assets, and hence the credit quality and anticipated timing of repayment of the debt issued in the securitisation, is based largely on projected cash flows on the assets sold as impacted by assumptions regarding prepayments and losses due to delinquencies and defaults. Typically, the originator retains a subordinate position in the cash flows generated by the assets, so that it receives all cash flows generated by the assets after the debt issued by the special purpose vehicle has been repaid.

1.4. Benefits of securitisation

Common benefits of securitisation are listed below. A securitisation may offer one or more of the benefits described. However, securitisations are complex structured financings and it is critical that potential issuers understand the range of options and related implications in order to be adequately informed when taking decisions. While these benefits have varying degrees of importance for different issuers, the common hallmark of

securitisations is that they provide a lower cost capital.

1. Provides efficient access to capital markets: Transactions can be structured with “AAA” ratings on most of the debt, so pricing is not tied to the credit rating of originator.

2. Minimises issuer-specific limitation on ability to raise capital: Capital raised becomes a function of the terms, credit quality, prepayment assumptions, and servicing of the assets and prevailing market conditions. Entities that are unable to borrow on their own credit, or can only do so at great cost, as well as entities that cannot raise equity, may be able to complete securitisations.

3. Converts illiquid assets to cash: Assets that cannot readily be sold may be combined to create a relatively diversified collateral pool against which debt can be issued.

4. Diversifies and targets funding sources, investor base, and transaction structures: Businesses can expand beyond existing bank lending

and corporate debt markets to tap a new market and a new set of investors. This also has the potential to lower the cost of other types of debt by reducing the volume issued, thereby allowing placement with marginal purchasers willing to pay a higher price. Especially for complex organisations, segmenting revenue streams or assets securing particular debt offerings enables issuers to market debt to investors based on their appetite for particular types of credit risk, while allowing these investors to minimise their exposure to unrelated issuer risk. Similarly, complex principal and interest payment structural features targeting the investment objectives of particular buyers can be incorporated into the debt. This segmentation of credit risk and structural features should minimise the overall cost of capital for the seller.

5. Raises capital to generate additional assets or apply to other, more valuable, uses: For example, it allows lines of credit to be recycled quickly to generate additional assets, as well as to free long-term capital for related or broader uses. Capital raised can be used for any allowable purpose,

such as retiring debt, repurchasing stock, purchasing additional assets, and completing capital projects.

6. Matches assets and liabilities to minimise risk: A properly structured transaction could create near perfect matching of term and cash flows locking in an interest rate spread between that earned on the assets and that paid on the debt.

7. Raises capital without prospectus-type disclosure: Allows sensitive information about business operations to be kept confidential, especially by issuing through a “conduit” or as a private placement.

8. Completes mergers and acquisitions, as well as divestitures, more efficiently: May assist in creating the most efficient combined structure and may serve as a source of capital in the transaction. By segmenting and selling assets against which debt is issued, it may be possible to more economically leave business lines that no longer meet corporate objectives.

9. Transfers risk to third parties: Financial risk from defaults on loans or contractual obligations by customers can be partially transferred to investors and credit enhancers.

1.5. Types of transaction

With regard to the transfer of rights of an asset, there are two forms of securitisation transaction:

“True sale”

In a traditional true sale structure, the originator sells a pool of assets to a special purpose vehicle (SPV). The vehicle funds the purchase through the issue of tranches of securities, which are rated by an agency. The rating of the securities reflects the fact that the SPV is isolated from any credit risk for the originator, and the credit enhancement of the pool.

“Synthetic”

In a synthetic securitisation, instead of selling the asset pool to the SPV, the originator buys protection through a series of credit derivatives. Such transactions do not provide the originator with funding. These transactions are typically undertaken to transfer credit risk and to reduce regulatory capital requirements.

1.6. Securitisation players

This section describes the players of a securitisation transaction. In addition to directly involved parties, there are a number of other parties, generally defined as service providers, which are also involved in the securitisation process. Below you will find an overview of the most relevant parties:

transaction closing. It is very common in securitisation transactions that the originators act as servicers though this is not always the case. For example, in most of the NPL (non-performing loans) transactions, specialised servicers tend to carry out this role.

Trustee

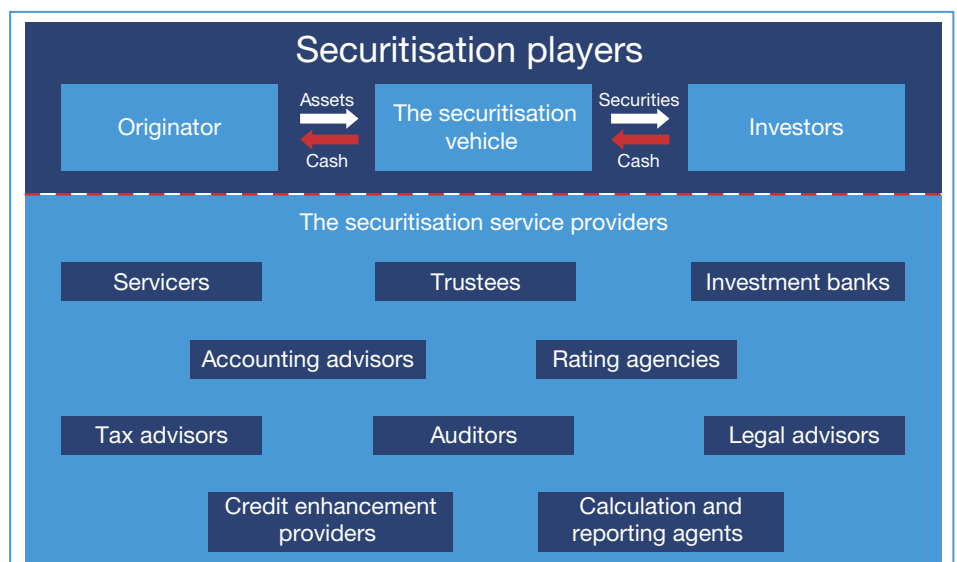
Legal responsibility for activities of the securitisation vehicle and the receipt and disbursement of coupon payments to the investors.

Investment banks

Main functions include structuring, underwriting and marketing of the transaction.

Tax and accounting advisers

Advise regarding the accounting and tax



Source: PricewaterhouseCoopers

Originator

The entity assigning assets or risks in a securitisation transaction.

Investor

Buys the securities and overtakes the risks.

Servicer

The entity that collects principal and interest payments from obligors and administers the portfolio after

implications for the parties involved in the proposed structure of the transaction.

Rating agencies

Based on the expected performance of the underlying asset portfolio, rating agencies set credit enhancement levels to achieve desired credit ratings of offered securities, assign rates to the bonds issued, evaluate the servicing capabilities and monitor the performance of the transactions.



Paying agent

Responsible for making the principal and interest payments to the security holders.

Legal advisers

In addition to developing the sale and purchase agreement for the portfolio and offering documents and any other relevant contracts, legal advisers issue a legal opinion on the “true sale” of the portfolio, if applicable.

Credit enhancement providers

Typically either third party monoline insurer or parent company of originator that guarantees principal and interest payments to note holders.

Calculation and reporting agent

Calculates the waterfall principal and interest payments due to note holders.

1.7. Types of credit enhancement

While there are other important considerations when structuring an efficient securitisation transaction (such as the separation of credit risk between the SPV and originator, avoidance of co-mingling of accounts between the sponsor and the SPV, avoiding double taxation over the vehicle or withholding requirements

for cross border transactions), credit enhancement protects investors so the pool of underlying assets can withstand fluctuations in the economy. If no credit enhancement were structured, investors would bear all of the credit risks in the pool of assets. Accordingly, internal and external mechanisms are typically built into the structure – a process that drives the ultimate ratings of the securities issued.

In order to protect the investors’ position in an asset pool, a number of different credit enhancement techniques could be utilised, including external credit enhancement (insurance type policies purchased to protect investors in case of default) or internal credit enhancement (techniques structured within the transaction).

Common types of each include:

External credit enhancement

Third party/parental guarantees

Policy that reimburses structure for losses up to a certain amount. Usually provided by rated insurance company or parent company of seller.

Letters of credit

Loss coverage provided by financial institutions which are required to have cash readily available to cover losses.

Surety bonds

Policy provided by a rated insurance company to protect principal and interest payments for certain investors. Typically provided on investment grade securities requiring other forms of credit enhancement to be deployed as well.

Internal credit enhancement

Over-collateralisation

The value of the underlying pool of assets exceeds the amount of securities issued.

Subordination

Prioritises cash flows to protect senior tranches by subordinate tranches in case of losses.

Excess spread

Net amount of interest payments of underlying assets, after deduction of transaction administration expenses and bondholders’ interest payments. The excess could be used to cover losses or to top up reserve fund.

Reserve fund

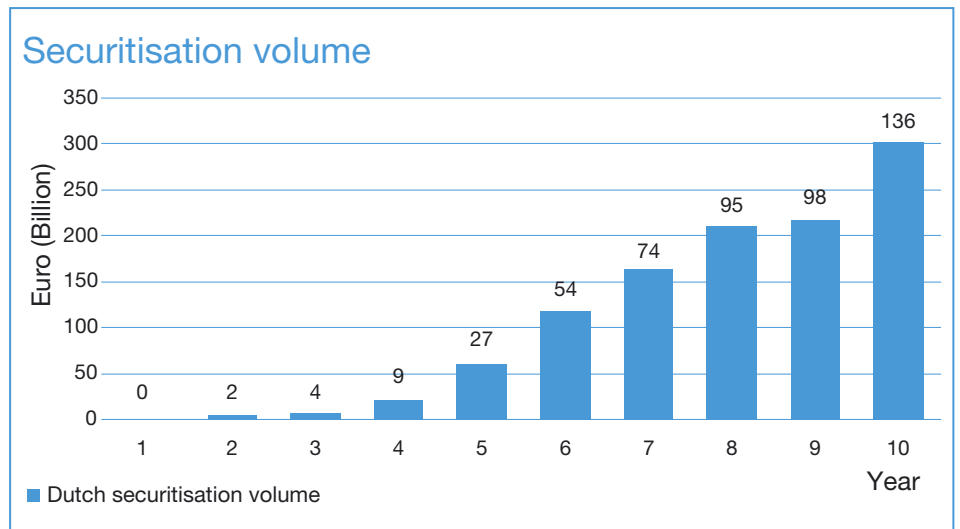
Funded either by cash at closing or excess spread and reimburses structure for losses up to the amount of the reserve.

Credit enhancement can be illustrated by the following example. As is the case in other issued securities, a rating of “AAA” implies near certainty of timely payment of interest and principal on the debt issued. Though it is highly unlikely that an entire pool of residential mortgage loans will command such a rating, a large portion of the portfolio may do so. The remaining portion of the portfolio is divided into different tranches through “A” and “BBB” to unrated first loss piece (which is typically held by the originator). Any losses on the portfolio are allocated to the unrated position and then usually to the lower rated securities up to the senior “AAA” position.

Part II: The Netherlands – securitisation in practice

2.1. Introduction

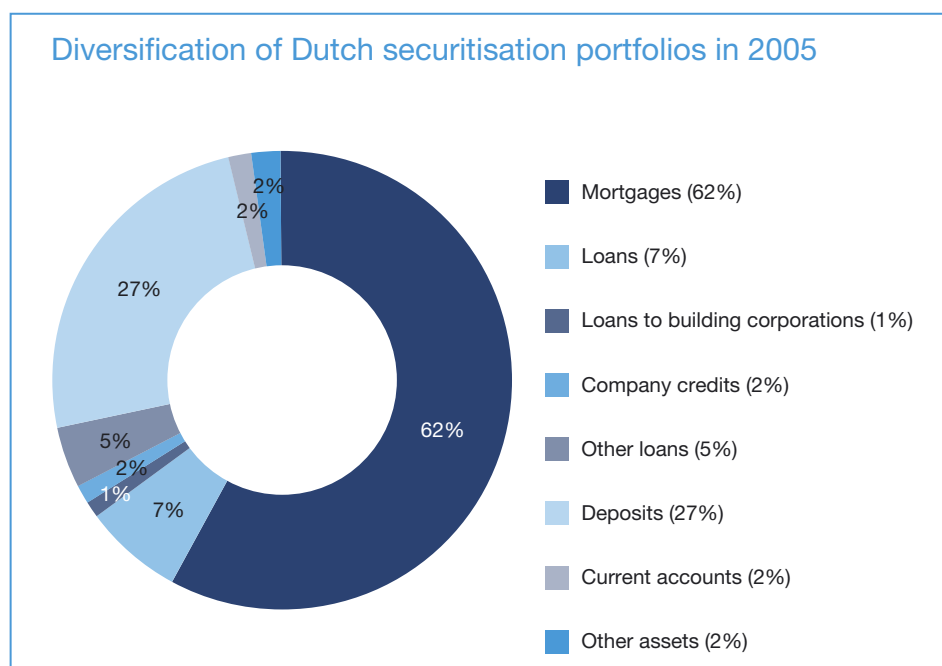
As third largest country in Europe with respect to securitisation in origination volumes in 2005, the Netherlands is an established order in the field of securitisation and SPVs and form a stable environment. The Netherlands is a preferred location for SPV establishment and increases in popularity, which is illustrated in the diagram adjacent.



Source: Dutch Central Bank



The assets of these SPVs are drivers as illustrated by the following graph.



Source: Dutch Central Bank

Parties involved in securitisation transactions are generally knowledgeable and have gained experience over the years in the fields of:

- Structuring
- Trust offices
- Audit
- Tax
- Supervising

The Netherlands lacks specific laws on securitisation transactions, but nevertheless the securitisation practise found some specific work arounds to overcome most of the legal hurdles, such as the Dutch silent pledge. Practically all cash flows arising from all sorts of asset can be securitised in the Netherlands. And although there are no formal minimum investment requirements, it

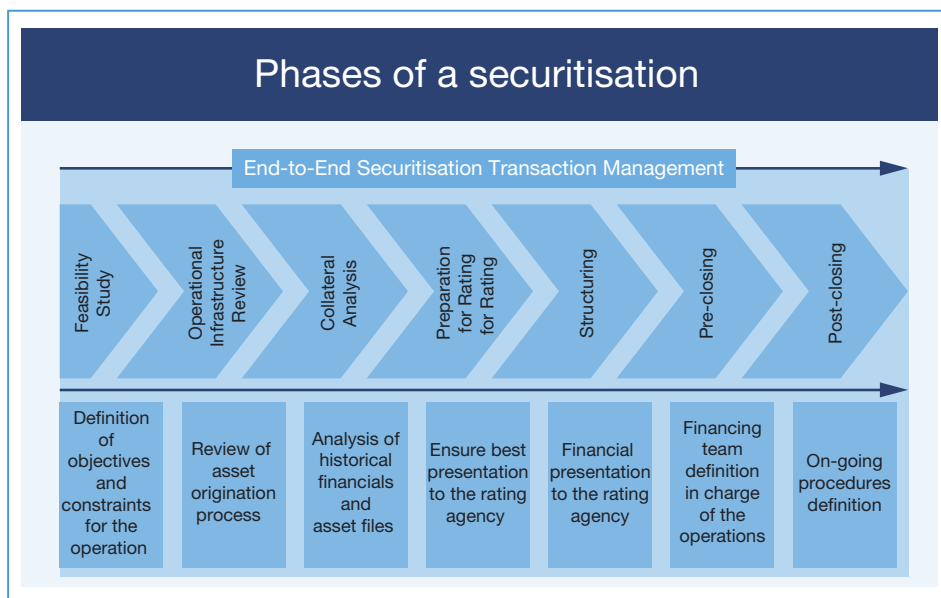
is believed that traditional transactions should have a minimum volume of approximately EUR 250 million to be economically viable. However, transactions with a lower volume do exist. These are mostly synthetic deals. The minimum investment required in synthetic transactions is generally believed to be lower than that of traditional transactions for the simple reason that these transactions come at a lower cost.

Under current Dutch law, a legal transfer of receivables requires a private deed between the assignor and the assignee and the debtor to be notified of the assignment. Most securitisations do not achieve a true sale, but are structured via the Dutch silent pledge. In this structure, the originator and the SPV execute a deed of assignment and

agree that debtors will only be notified if and when specific events have occurred. Since notification can no longer take place on bankruptcy of the originator, it is explicitly agreed that, in such cases, the originator will have to pay a penalty to the SPV. To secure payment of the penalty, the originator and SPV will enter into a private or notarial deed in which the originator will pledge the receivables held by the originator to the SPV.

2.2. Phases of the securitisation process and our servicing offerings

The different aspects of securitisation transactions are outlined below. Though not exhaustive, the list is to provide an understanding of the processes involved in a typical transaction and of the services that PricewaterhouseCoopers can provide in each phase.



Source: PricewaterhouseCoopers

2.2.1. Feasibility study phase

A company considering a securitisation issue or program must be able to delineate its objectives and the constraints under which it operates. To ensure that the transaction is actually started, specialists at PricewaterhouseCoopers can review the asset origination, servicing, and reporting processes as well as information about past performance of the assets to be securitised. For many new issuers, this phase is the most critical phase, because it brings relevant factors and options to light that may significantly influence the direction taken. As a result, the company's objectives are better realised. Typical areas that our specialists will review include:

- Operations overview: systems, policies, responsibilities of each party.
- Portfolio performance: comparison to standard securitisation industry practices.
- Financial overview: funding alternatives, profitability measurement, current funding sources.
- Legal overview: asset segregation, existing covenants and agreements.
- Tax implications: impact on tax liability, tax advantaged structures.
- Credit overview: rating of individual obligators and overall portfolio, level of concentration, risk disclosure and risk management policies, and originator and servicer credit quality.
- Regulatory overview: National, EU or US requirements and impact of securitisation.
- Strategic: What business model achieves the highest overall profitability? What are the risk-reward trade-offs? What is the best way to raise capital in this business model?
- Identification and evaluation of alternatives to achieve objectives and to mitigate weaknesses for key areas such as: operations, systems, cash

flow, financial reporting, legal, tax, regulatory, and credit.

If a structured financing is to be executed, it is in the issuer's interest to perform a self-assessment before presenting information to outside parties.

The next two sections discuss operations and financial review; these phases are completed as part of the evaluation and planning processes before conducting a transaction.

2.2.2. Operations/infrastructure review phase

Invariably, practical problems arise when companies provide historical data and information concerning the asset pool or its ongoing ability to meet servicing and reporting requirements. PricewaterhouseCoopers can help you to evaluate receivables and servicing systems, and to assess underwriting standards and collection policies, which



will be imperative for outside parties. Items we will consider include:

Asset origination

- What is the credit review process? Do policies exist and are they consistently applied? Can credit review be made more efficient through system improvements, staff enhancements, credit scoring, etc.?
- Is application processing timely and efficient from the perspective of both originator and obligator? Can it be streamlined or expedited?
- Is documentation standardised (to the extent possible)?
- Are there any legal issues, such as enforceability?

Servicing and reporting

- Is the system sufficiently robust and does it have the flexibility to address servicing and reporting requirements of a securitisation?

- Can required data be made available timely?
- Are appropriate operating and management reports generated to make decisions regarding allocation of servicing resources, front-end pricing, performance triggers and trends, etc.

2.2.3. Collateral analysis phase

In conjunction with the aforementioned review of reporting systems and servicer collection policies and procedures by PricewaterhouseCoopers, we can also evaluate the collateral portfolio. In order to effectively assess the credit quality of a given portfolio, the major rating agencies typically review historical financials and the adequacy of asset files.

This will include:

i. Portfolio data analysis

- Review of 10 years historical asset performance information

- Analysis of a static pool of assets which are isolated over a static period of three or five years. Principal/interest, prepayment, and delinquency/default performance characteristics evaluated per origination time period.

ii. Asset file review

- Review of completeness of physical asset files
- Identification of all possible source documents and reports

iii. Ensure saleability of assets

- Identification of data inconsistencies and deficiencies
- Analysis of the company's charge-off policy.

2.2.4. Preparation for rating agencies review

Following an in-depth analysis of collateral systems and operations, the securitisation transaction is presented to the rating agencies which will then determine the overall enhancement levels by assigning ratings to the notes offered. PricewaterhouseCoopers offers assistance to originators in presenting the securitisation transaction to the rating agencies in the best possible way so as to minimise the overall enhancement levels.

2.2.5. Structuring phase

The fifth part of the evaluation and planning process for a securitisation transaction includes assessing the financial impact of the securitisation transaction. In this phase, our corporate finance specialists focus on various approaches of funding (e.g. securitisation versus whole loan sales or other alternatives), funding sources (e.g. interpretation and harmonisation of funding alternatives), credit considerations (e.g. desired credit rating, least expensive all-in credit structure), and legal issues (e.g. covenants, events of default, other legal terms impacting the business).

2.2.6. Pre-closing phase

After laying the groundwork for a transaction, originators/transferees are to request and evaluate proposals and select financing team members whose strengths and ideas are best suited to the company's needs. Our specialists can offer their assistance to the financing members. The financing team, supported by our specialists, will coordinate the negotiation of business and pricing terms and coordinate presentations to credit analysts to ensure the most favourable reception. The myriad of activities often undertaken as part of a first securitisation include:

- **Assemble financing team** (financial adviser, legal adviser, underwriter, third party credit enhancer/liquidity support, trustee, rating agencies)

- **Prepare legal and disclosure documents** (ensure key business terms reflected, set the agenda for future transactions, maximise flexibility)
- **Finalise deal structure** (issuer objectives and constraints, asset selection, credit enhancement, market conditions, test sensitivity to changing circumstances and stress test)
- **Present structure to credit and business analysts** (rating agencies, credit enhancers, underwriters, investors, internal constituencies)
- **Validate data** (portfolio due diligence, verification of disclosure information)
- **Price transaction** (review comparable transactions, general market conditions, etc., negotiate possible spread with underwriter)

2.2.7. Post-closing phase

When the transaction has been completed, issuers have certain ongoing responsibilities for and interest in the financing and underlying assets, including: servicer statement preparation, investor reporting, internal management and operations reporting, procedures review/surveillance and related reporting of findings, tax calculations, financial reporting, portfolio and transaction performance tracking.

2.3. Legal forms of securitisation vehicles

Two legal entity types are used for structuring SPVs in the Netherlands: the limited liability company (“Besloten Vennootschap”, or “B.V.”) and the foundation (“Stichting”).

Common practice in the Netherlands is to use the *orphan structure*, where the foundation is the holder of all of the stocks of the limited liability company. In general, both the limited liability company and the foundation are directed by trustees and they operate on ‘auto-pilot’.

The incorporation of a limited liability company is relatively easy. A share capital

of at least EUR 18,000 is required. Prior to its full incorporation, a company may already conduct activities for the risk and benefit of the company, which may speed things up. However, directors are personally held liable for transactions conducted before full incorporation.

2.4. Taxation in securitisation

The success rate of most of the products offered on capital markets largely depends on the tax environment they are subject to. Therefore, tax neutrality is a key success factor for a securitisation transaction in order to optimise investors' return and minimise originators' funding costs. In terms of choosing a jurisdiction for a securitisation special purpose vehicle (SPV) the following tax drivers are critical:

- Tax neutrality for the SPV;
- The ability of the SPV to make outward payments free of withholding tax;
- The ability of the SPV to receive income free of withholding tax;
- No local tax liability for the foreign note holders; and
- The favourable VAT position of the SPV.

The Netherlands is a jurisdiction that satisfies the above critical tax drivers for securitisation transactions. Moreover, the Netherlands offers an onshore location with a solid and stable financial infrastructure and is a member state of the European Union.

Generally, securitisation transactions in the Netherlands can be structured such that the tax drivers required are satisfied. The Dutch tax authorities have introduced the possibility of obtaining advance clearance on the tax consequences of specific transactions. This certainty can be obtained in the form of either ATRs (Advance Tax Ruling) or APAs (Advance Pricing Agreements).



The ATRs/APAs can be obtained at an early stage, before forming a securitisation SPV or conducting any transactions. It is vital that tax advice is obtained at an early stage to ensure the tax drivers are satisfied and the structure does not need to be changed after having conducted transactions that are subject to an evaluation of every external party (e.g. rating agencies, legal and regulatory authorities, investors, etc.). In this context, PricewaterhouseCoopers can fully advise and assist you in connection with all of the relevant tax issues.

2.4.1. Corporate income tax

As stated above, two types of legal entities are generally used for structuring SPVs in The Netherlands, the limited liability company (“Besloten Vennootschap”, or “B.V.”) and the foundation (“Stichting”).

Common practice in the Netherlands is using an “orphan structure”, where the foundation is the holder of all of the stock issued by the limited liability company.

Foundations should not be subject to Dutch corporate income tax provided they are merely holding the shares of the SPV. The SPV is subject to Dutch corporate income tax. However, with respect to securitisation transactions, the taxable income can be determined either on a cost plus basis, where the interest element is excluded from that basis or on a fixed profit per annum basis. For both methods, Advance Tax Rulings can be negotiated with the Dutch tax authorities. As a result, the taxable income of the SPV can be minimal. Taxable income is taxed at a flat rate of 29.6% (rate 2006), and the first EUR 22,689 at a rate of 25.5% (rate 2006). In the 2007 Dutch Tax

Reform, it is proposed to lower the flat tax rate to 25.5%, furthermore two lower tax rates will be introduced:

- For profits up and including EUR 25,000 the rate will be 20%;
- For profits between EUR 25,000 and EUR 60,000 the rate will be 23.5%.

If the Tax Reform is approved by parliament the rate should apply as from 2007.

2.4.2. Withholding taxes – outward

Generally, debt is used to finance the SPV by way of loan or the issue of notes, bonds or commercial papers. The success of the Netherlands as a securitisation SPV location is partly attributable to the fact that it does not levy interest withholding tax over interest payments made by Dutch companies.

2.4.3. Withholding taxes – inward

Cash flows from assets often generate withholding taxes over the income and/or capital gain flows on those assets, which can only be avoided by locating the SPV in a jurisdiction which has a double tax agreement with the country of origin of those assets. The Netherlands’ extensive treaty network – with currently 82 treaties and several treaties under negotiation – is an attractive feature for securitisation SPVs.

2.4.4. Taxation of note holders

In principle, foreign note holders are not subject to Dutch income tax, as long as they do not choose to be treated as a Dutch resident in respect of their worldwide income. As stated under section 2.4.2, the Netherlands does not levy interest withholding tax, as a result of which no Dutch tax liability for the foreign note holders should arise.

2.4.5. Dutch VAT treatment

In order to ensure tax neutrality, the VAT position of the securitisation vehicle plays an important role. This is particularly true for the VAT treatment of the fees charged to the SPV. The Dutch VAT treatment of securitisation transactions depends on:

- (i) the VAT status of the SPV;*
- (ii) the nature of the services rendered to the SPV;*
- (iii) the location of the service provider.*

The above elements are key when analysing the impact of VAT on securitisation transactions.

(i) The VAT status of the SPV

The Dutch VAT status of the SPV depends on the qualification of the activities of the SPV. If the SPV makes taxable supplies, it will qualify as a taxable entity for Dutch VAT purposes. The investments in notes

or bonds are generally considered as non-taxable activities unless such notes or bonds are actively managed on behalf of the note holders. Investments in loans may result in the SPV carrying out entrepreneurial activities (i.e. the granting of credit). In general, the VAT position needs to be determined on a case-by-case basis.

If the SPV is involved in making taxable supplies, such supplies will typically be exempt supplies so that there is no obligation for the SPV to charge VAT on any of its activities.

(ii) The nature of the services

Apart from the VAT position of the SPV itself, the VAT treatment also depends on the nature of the services rendered to the SPV.

If the SPV cannot be regarded as a taxable entity for Dutch VAT purposes,



any professional services (such as advisory, legal and accounting services) and financial services (such as asset management services) rendered to it by EU suppliers will not be subject to Dutch VAT.

If the SPV is regarded as a taxable entity for Dutch VAT purposes any professional services and financial services rendered to it by EU suppliers may be subject to Dutch VAT if no exemption applies.

The Netherlands has always been a suitable jurisdiction for securitisation vehicles and an exemption for the management of funds brought together for collective investments has been available since 2001. On numerous occasions, this exemption is confirmed in advance by the Dutch tax authorities by way of a VAT ruling. As a result of the ruling of the European Court of Justice in the *Abbey National plc/Inscape Investment Fund* case, the exemption should also apply to the administration of such funds and the sales and marketing thereof.

(iii) The location of the service provider

The VAT consequences as set out above are based on service providers based in another EU jurisdiction. However, if the service provider is located in the Netherlands or a non-EU jurisdiction (or if it has a branch in the Netherlands or outside the EU through which the investment management or advisory services are rendered) the VAT position may be different. In such cases, Dutch value added tax may be due with respect to fees for professional services (such as advisory, legal and accounting services) and non-exempt financial services charged to the SPV albeit that for most financial services an exemption will be available. The same applies to the management of funds brought together for collective investment purposes.

Our VAT specialists have extensive experience in structuring securitisation transactions in a VAT efficient manner and can advise you on the best jurisdiction to

set up the SPV vehicle and maintaining tax neutrality from a VAT perspective.

2.4.6. Stamp duty and capital duty

The Netherlands does not levy any stamp duty and has abolished capital duty as from 1 January 2006.

2.5. Accounting and audit

All companies with debt or equity listed on an European stock market are obliged to prepare consolidated annual accounts in accordance with IFRS. All other companies have a choice to prepare annual accounts in accordance with either Dutch GAAP, or IFRS. In general, single SPVs are legal entity companies, which are not required to prepare IFRS financial statements in the absence of consolidation.

In general, the annual accounts must be prepared within five months after the balance sheet date. The accounts should be adopted and/or approved by the shareholders general meeting. Eight days after the adoption and/or approval by the general meeting of shareholders, the accounts should be filed at the Chamber of Commerce. These deadlines may be postponed for another seven months upon approval of the shareholders.

The accounting rules applicable to securitisation vehicles are similar to those of other limited liability companies. The SPV should prepare annual accounts, which require, depending on the size of the company, an annual audit. Based on the exemptions under Dutch law, small companies are exempt from an annual audit. However, rating agencies often require an annual audit of the SPV, regardless of its size.

2.6. Laws and regulations

On the origination side, the Dutch Central Bank has issued regulations for regulated

originators, which may lead to capital relief when the transaction transfers risk from the originator.

A WTK licence (“Wet Toezicht Kredietverlening”) is required whenever the SPV attracts money or acts as an arbitrator. Upon request, WTK exemptions for SPVs are generally provided.

2.7. Risks on securitisation vehicles

Following the collapse of Enron, the role that Special Purpose Vehicles (SPVs) played in allegedly concealing the true financial position of Enron has been subject of much speculation. Structured finance departments create SPVs as part of transactions they structure on behalf of clients or for their own financial institution. Once the transaction is implemented, the existence of these SPVs is often forgotten.

Audit Committees and senior executives are beginning to ask themselves whether they really understand the risks that arise from transactions involving SPVs and whether their institution is properly controlling those risks.

The circumstances surrounding Enron may be unique, but it prompts questions of wider applicability to the senior management of investment banks and other companies actively involved in the use or promotion of SPVs.

Accounting for SPVs is a complex area. Local and international accounting rules differ in relation to derecognition of assets and consolidation of SPVs. Many institutions have yet to evaluate the implications of the potential local adoption of IAS, and SIC 12 in particular, on the way they account for SPVs. It is therefore important that institutions maintain a comprehensive list of all SPV related transactions they have conducted, and review the appropriateness of their treatment of each.

However, the risks associated with SPVs go well beyond those associated with an incorrect accounting treatment. Counterparty exposures to SPVs created on behalf of corporate clients present obvious risks as they are generally thinly capitalised and cannot be controlled nor supported by the client. Moral hazard connected with a bank's own SPV structures may also mean that in reality the bank's exposures are much larger than those indicated by its credit risk reporting systems.

The Basel II capital regulations may also have a significant impact for sponsors of securitisation SPVs to which they provide liquidity support. Typically, such structures cannot easily be terminated and some banks and securities firms may find significant additional capital requirements are imposed on them.

Considerable reputational risks, if not legal liability, exist for banks structuring transactions for clients, the probability and motivation of which subsequently

come into question. A number of banks have previously faced regulatory fines and other penalties for structuring inappropriate transactions.

Banks should not forget either that anti-money laundering know-your customer rules apply to SPVs as well as to other companies.

In practice companies often struggle simply to produce a comprehensive list of SPVs they have created or sponsored. Individuals involved in structuring a transaction some years ago may have left, and unless a periodic credit review is required, there may be no documentation readily available to allow an independent risk assessment.

Senior management members need to ask themselves a series of questions:

- Are they comfortable that they understand the extent and nature of transactions conducted that involve SPVs?
- Are transactions with SPVs, whether as arranger, end user or counterparty, conducted in a manner that is consistent with the policies and risk appetite approved by the Board?
- Are the responsibilities of risk management, financial control and compliance departments clearly defined in relation to transactions using SPVs?
- Is there a robust process before a transaction is approved and conducted, requiring an evaluation of the risks and the ability of the institution to control those risks, and sign-off by individual departments to that effect?
- Do reporting systems adequately capture information concerning SPVs?
- Are accounting policies concerning structures involving SPVs still appropriate?
- Is there an ongoing risk assessment process which ensures that SPV related transactions are subject to periodic review?



Part III: Contacts

Should you have any questions, please do not hesitate to contact one of the following experts:

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