



Securitisation Comparative Guide

 **STUARTS HUMPHRIES**

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1. Legal and regulatory framework

1. 1. Which laws typically govern securitisations in your jurisdiction?

Cayman Islands
Stuarts Humphries

There are no specific laws governing securitisation transactions in the Cayman Islands. The Cayman Islands has company, trust, partnership and related laws that allow a high degree of flexibility for establishing special purpose vehicles – typically a Cayman Islands exempted company.

1. 2. Which bodies are responsible for regulating securitisations in your jurisdiction?

What powers do they have?

Cayman Islands
Stuarts Humphries

There is no regulatory body responsible for the regulation of securitisation in the Cayman Islands; however, the Cayman Islands Monetary Authority (CIMA) is the government body that is primarily responsible for administering the corporate legislation. CIMA has various powers to enforce and ensure compliance with Cayman Islands corporate legislation, including the imposition of fines and penalties for non-compliance.

1. 3. What is the regulators' general approach in regulating securitisations?

Cayman Islands
Stuarts Humphries

Not applicable.

1. 4. What role, if any, does the central bank play in the securitisation market in your jurisdiction?

Cayman Islands
Stuarts Humphries

CIMA acts as the central bank, but it does not play a role in the securitisation market above and beyond its powers to administer the corporate legislation.

2. Market and motivations

2. 1. How sophisticated is the securitisation market in your jurisdiction and how has it evolved thus far?

Cayman Islands
Stuarts Humphries

The Cayman Islands is used extensively for securitisation given the ease of establishing special purpose vehicles (SPVs) in the jurisdiction.

Over the years, the Cayman Islands has become an even more attractive market for cross-border transactions given the introduction of the Limited Liability Companies Act (As Revised). This has allowed for the formation of limited liability companies (LLCs) similar in structure and governance to a Delaware LLC, which in turn has allowed for further structuring options for securitisation and warehouse vehicles. LLCs have the potential to be used for collateralised loan obligation transactions, holding companies and SPVs.

2. 2. In which industry sectors, if any, is securitisation most common in your jurisdiction? What major securitisations have been effected thus far?

Cayman Islands
Stuarts Humphries

Securitisations in the Cayman Islands cover a large range of assets, including securities, mortgages, receivables, royalties, rentals and any other asset that produces income. The most common are real estate loans and securities from onshore financial markets.

2. 3. What are the benefits of securitisation, for both originators and investors?

Cayman Islands
Stuarts Humphries

The main benefits of using the Cayman Islands for securitisation include the following:

- No government approval is required for the incorporation of an SPV (unless it involves insurance assets);
- No taxes are imposed in Cayman on SPVs or their shareholders;
- An SPV can be incorporated within 24 hours on an expedited basis;
- SPVs are incorporated with limited liability;
- There are no residency requirements for directors of an SPV; and
- Cayman law does not require the issue or obligation of a prospectus where an exempted company offers shares to the public.

2. 4. What are the risks of securitisation, for both originators and investors?

Cayman Islands
Stuarts Humphries

Given the low level of regulatory risk in the Cayman Islands, the risks of securitisation for both originators and investors are largely commercial risks which are commonly faced by all securitisations, including the following:

- Cash-flow risk: Originators typically rely on a steady cash flow from the securitised assets. However, if the underlying assets perform poorly, this can lead to a reduction in cash flow, affecting the originator's ability to meet its obligations and thus ultimately payments to investors.
- Market risk: The value of securitised products may fluctuate due to changes in interest rates, economic conditions or investor sentiment. These market risks can impact on the price and liquidity of the securities, potentially resulting in losses for investors.
- Reputation risk: If the quality of the securitised assets deteriorates or if the originator fails to disclose accurate information about the underlying assets, this can harm the originator's reputation in the market and thus ultimately the investors.
- Credit risk: Originators and investors face the risk that the underlying assets may experience default or credit deterioration, leading to potential losses.

2. 5. Is there a developed covered bond market in your jurisdiction and how does it compare and compete with securitisation as means of disintermediation and recycling bank capital?

Cayman Islands
Stuarts Humphries

No.

2. 6. To what extent does the government intervene as a state actor in securitisation (eg, by guaranteeing certain securitised assets, providing credit enhancement to impact transactions or sponsoring public bodies to act as originator of or investor in asset-backed securities issues)?

Cayman Islands
Stuarts Humphries

The Cayman Islands Monetary Authority does not intervene to any extent as a state actor.

3. Structures

3. 1. What securitisation structures are most commonly used in your jurisdiction?

Cayman Islands
Stuarts Humphries

The most common structure is the use of a special purpose vehicle (SPV) as an 'orphan' which sits outside of the originator's corporate group. When an orphan is used, the SPV issues all of its shares to an offshore trustee pursuant to a charitable or purpose trust, which in Cayman is referred to as a STAR trust.

Although it is possible to structure an SPV which is directly owned by a parent, this is not common in Cayman.

3. 2. What is the split between ‘term’ and asset-backed commercial paper transactions?

Cayman Islands
Stuarts Humphries

Not applicable.

3. 3. What are the advantages and disadvantages of these different types of structures?

Cayman Islands
Stuarts Humphries

The main advantages of an orphan SPV and charitable/purpose trust structure in the Cayman Islands include the following:

- The purposes of the trust and, incidentally, the duties of the trustee can be clearly linked to the securitisation transactions, such as:
 - subscribing for shares in the SPV;
 - retaining those shares; and
 - supporting the activities of the SPV in the securitisation transactions.
- Cayman Island SPVs can be incorporated relatively quickly, with minimal governmental approval and minimal ongoing fees to the Cayman Islands Monetary Authority.
- The constitutional documentation of the SPV and trusts can be crafted to ensure that the SPV will only enter into the specific securitisation transactions, which is done for the benefit of the beneficiaries of the trust.

The main disadvantage in choosing between a purpose trust or a charitable trust is that choosing a charitable trust requires extra documentation to establish the contractual relationship. A purpose trust can set everything out in a single document.

The main disadvantage of an SPV/parent structure is that it reduces the bankruptcy remoteness between the SPV and its parent.

3. 4. What other factors should originators consider when deciding on a structure?

Cayman Islands
Stuarts Humphries

Originators should take into account the accounting treatment of the securitisation transaction, including whether it will be off-balance sheet and the relevant accounting rules in the jurisdiction of the originator. This will ultimately affect the drafting of the transaction documents and the organisation of the SPV structure for the securitisation.

4. Eligibility

4. 1. What requirements and restrictions apply to prospective originators in your jurisdiction?

Cayman Islands
Stuarts Humphries

Few to no requirements or restrictions apply to prospective originators in the Cayman Islands.

If the originators or issuers do not conduct business within the Cayman Islands and the issuer does not extend a public invitation within the Cayman Islands to subscribe to its securities, there is no obligation under Cayman Islands law for these transaction participants to obtain a licence to operate in the Cayman Islands.

4. 2. What requirements and restrictions apply to prospective investors in your jurisdiction and how are retail and wholesale/professional investors distinguished?

Cayman Islands
Stuarts Humphries

Assuming that there is a public invitation to subscribe for the securities being made in the Cayman Islands, there are no requirements or restrictions which apply to prospective investors.

4. 3. What requirements and restrictions apply to custodians and servicers in your jurisdiction?

Cayman Islands
Stuarts Humphries

No requirements or restrictions apply to custodians and service providers in the Cayman Islands as they relate to securitisation transactions. These roles are usually carried out by transaction parties operating from and based outside of the Cayman Islands.

4. 4. What classes of receivables and other assets may be securitised in your jurisdiction? What requirements and restrictions apply in this regard?

Cayman Islands
Stuarts Humphries

There is no law which prescribes what class of receivables or other assets may be securitised in the Cayman Islands.

4. 5. What measures, if any, have been taken in your jurisdiction to promote investor involvement in securitisations?

Cayman Islands

Stuarts Humphries

The Cayman Islands is a constantly evolving jurisdiction which regularly amends its legislation and regulatory guidance to ensure that it remains an attractive place for investors to be involved in securitisations. This allows the Cayman Islands to maintain best practices in line with the global securitisation market and ensure that the Cayman Islands exempted company is the securitisation vehicle of choice.

Examples of these measures include:

- the introduction of a limited liability company vehicle, as discussed in question 2.1; and
- the introduction of non-petition clauses within the Cayman Islands legislative regime.

Additionally, the Companies Law is routinely updated to include provisions such as allowing foreign entities to merge with Cayman Island companies which is common in the collateralised loan obligation market.

5. Special purpose vehicles

5. 1. What forms do special purpose vehicles (SPVs) typically take in your jurisdiction and how are they established?

Cayman Islands
Stuarts Humphries

An SPV will typically be in the form of a Cayman Islands exempted company incorporated with limited liability. This kind of SPV can generally be incorporated within 24 hours, by delivery of two signed copies of the memorandum of association and articles of association to the registrar of companies.

5. 2. Are SPVs typically established locally or offshore? What are the benefits and risks of each?

Cayman Islands
Stuarts Humphries

SPVs are established offshore in the Cayman Islands. The benefits and risks are described in question 3.

5. 3. How is the SPV typically owned?

Cayman Islands
Stuarts Humphries

Either:

- an SPV is wholly owned by a parent as a subsidiary; or
- if it is an orphan SPV, the sole shareholder will be the trustee of a Cayman STAR trust.

5. 4. What requirements and restrictions apply to SPVs in your jurisdiction?

Cayman Islands
Stuarts Humphries

Provided that they do not conduct business within the Cayman Islands and do not extend a public invitation within the Cayman Islands to subscribe to its securities, there are no general requirements or restrictions which apply to SPVs in the Cayman Islands.

If an SPV does conduct business within the Cayman Islands, it may have to satisfy the ‘economic substance’ test under the International Tax Co-operation (Economic Substance) Act (2021 Revision).

5. 5. What requirements and restrictions apply to the directors of the SPV? What are their primary duties?

Cayman Islands
Stuarts Humphries

The directors of an SPV, such as a Cayman Islands exempted company, are subject to the English common law principles relating to directors’ duties, which have been adopted by the Cayman Islands courts. The Cayman Islands Companies Act does not provide for the general or fiduciary duties of directors.

These common law principles of directors’ duties incorporate a duty:

- to exercise their powers for the purposes for which they are conferred;
- to act in what the directors *bona fide* consider to be the best interests of the company;
- to avoid conflicts of interest and of duty;
- of trusteeship of the company’s assets;
- not to make secret profits from their appointments;
- to disclose personal interest in contracts involving the company; and
- to act with skill, care and diligence.

For most off-balance sheet securitisations, an administration agreement will be entered into between the SPV and a corporate services provider for the provision of administrative and corporate support services to the SPV. The corporate services provider, under the administration agreement, typically provides independent directors and officers for the SPV, who are independent of the originator, but may be employees of the trustee to the STAR trust. Employment with the trustee does not absolve the Cayman Islands SPV directors of their fiduciary duties, and they must act in the best interests of the SPV at all times.

5. 6. What measures can be implemented to ensure, as far as possible, the insolvency remoteness of the SPV?

Cayman Islands
Stuarts Humphries

By structuring a securitisation using the orphan SPV model as described in question 3.1, the insolvency remoteness of the SPV can be mitigated to great lengths. This is because, subject to certain assumptions, the fact that the trustee of the STAR trust holds the SPV's ordinary shares does not mean that the SPV is regarded as the beneficially owned subsidiary of the trustee.

The bankruptcy remoteness of the SPV can be further achieved by ensuring that, prior to the transactions being entered into, the objects and powers of the SPV be limited to allow the SPV to enter into the specific securitisation transactions only. Additionally, when implementing the orphan SPV structure, it is important that the trustee of the STAR trust is not allowed to:

- sell the SPV's shares;
- amalgamate the SPV;
- amend the SPV's constitution; or
- continue the SPV in another jurisdiction.

If a securitisation structure involves an SPV that is wholly or partly owned by the originator or the transaction parties, some company law and structure arrangements can be implemented to extend the insolvency remoteness of the SPV.

5. 7. If the originator becomes insolvent, is there a risk that the assets of the SPV may be consolidated with its own by the courts? If so, how can this be mitigated?

Cayman Islands
Stuarts Humphries

There is a low risk of the assets of an insolvent SPV undergoing substantive consolidation by the Cayman Islands courts, provided that there are no circumstances which would give the court cause to 'lift the corporate veil'. Cayman Islands jurisprudence, which is derived from English case law, broadly illustrates that only in exceptional circumstances will the separate legal personality of a company be ignored, such as where:

- incorporation is used for an illegal or immoral purpose;
- the company is a party to some form of fraud;
- the company is a sham company; or
- public interest concerns outweigh upholding of the principle of separate legal personality of the company.

In one such case, the Grand Court of the Cayman Islands consolidated the parents of a group of companies where there had been systemic fraud by the owners and management of the companies.

These factors are unlikely to be relevant in the context of a securitisation structure, but these circumstances can be mitigated by ensuring that:

- the transaction documents are at arm's length;
- anti-money laundering and know-your-customer procedures are followed at all steps of the transaction;
- the independent directors of the SPV come from a reputable corporate services provider; and
- good corporate governance is observed by all parties.

6. Transfer of receivables

6. 1. Can the transfer of receivables to the SPV be governed by laws other than your local law? If so, what laws are typically chosen?

Cayman Islands
Stuarts Humphries

Yes. Foreign laws will be upheld by the courts of the Cayman Islands as a valid choice of law, provided that the choice of law:

- has been agreed upon in good faith; and
- is regarded as a valid and binding selection which would be upheld by the courts of that particular jurisdiction.

6. 2. What local law requirements (documentary and procedural) are required to ensure that foreign law documents are recognised and enforceable locally?

Cayman Islands
Stuarts Humphries

There are no registration requirements for foreign law documents in order to be recognised. To enforce a foreign law document – for example, to remedy a breach or obtain an order for specific performance – it will need to be enforced by the courts of the Cayman Islands.

6. 3. How does the transfer of receivables from the originator to the SPV typically take place? What are the formal, documentary and procedural requirements for perfecting the transfer?

Cayman Islands
Stuarts Humphries

Where a receivable is assigned under an agreement governed by Cayman Islands law, the assignment is perfected by giving notice to the obligors. There are no restrictions under Cayman Islands law which prevent an SPV from acquiring new assets or from transferring its assets after the issuance of its securities.

6. 4. What other requirements and restrictions apply to the transfer of receivables?

Cayman Islands
Stuarts Humphries

There are no other requirements or restrictions on the transfer of receivables.

6. 5. Is there a doctrine under which a transaction describing itself as a sale can be recharacterised by the courts as a financing secured by assets which are the subject of the purported transfer? How can the application of this doctrine be overcome?

Cayman Islands
Stuarts Humphries

In the Cayman Islands, the sale and purchase of receivables are typically regarded as a complete assignment and transfer under Cayman Islands law. There is no guidance from the Cayman Islands authorities on the possibility of treating the sale and purchase of an asset as a loan secured by that asset or any other transaction, or considering it as a sham. However, principles outlined in English authorities – which hold persuasive value – suggest that if the transfer agreement clearly indicates an outright sale and purchase of the receivables and not a transfer for security purposes, it is unlikely to be recharacterised as such, unless there are other significant factors in the circumstances. A Cayman Islands court will likely take into account several factors, including:

- the absence of the seller’s right to reclaim any of the receivables by repaying the sale price;
- the absence of an obligation on the buyer to share any ‘profit’ obtained from the realisation of the receivables with the seller; and
- the buyer’s lack of specific recourse against the seller if a particular asset within the receivables yields an amount that is less than the purchase price.

6. 6. If the originator becomes insolvent, is there a risk that the transfer of receivables may be unwound? If so, how can this be mitigated?

Cayman Islands
Stuarts Humphries

Please see question 5.7.

7. Security

7. 1. What types of security interests can be taken over the assets of the SPV in your jurisdiction? Which are most commonly used?

Cayman Islands
Stuarts Humphries

The most common security interests in off-balance sheet securitisations involve security being granted over the underlying assets by the SPV in favour of the trustee for the benefit of the secured parties. These security interests usually exclude:

- any accounts maintained in the Cayman Islands in respect of such funds;
- the amounts (if any) remaining from the proceeds of the issuance and allotment of the issuer’s ordinary shares; and
- the corporate benefit fee paid to the issuer in respect of the transaction.

7. 2. What are the formal, documentary and procedural requirements for perfecting a security interest?

Cayman Islands
Stuarts Humphries

The Cayman Islands has no public registration system to allow for the registration of security, mortgages, charges or any other form of security interest. It also has no legislation dealing with the perfection of security interests and offers no statutory priority for security interests.

A Cayman Islands entity is required under the Companies Act to maintain an internal register of mortgages and charges in respect of security interest. Only a member of the company or a creditor has a right to inspect those registers, and third parties generally cannot do so.

Because of this, recording a security interest on a company's register of mortgages and charges does not provide constructive notice of the existence of the charges to third parties. Additionally, a failure to record the security interests does not invalidate or change the priority of the security interest.

7. 3. What charges, fees or taxes arise from the perfection of a security interest?

Cayman Islands
Stuarts Humphries

Not applicable.

7. 4. What other considerations should be borne in mind when perfecting a security interest in your jurisdiction?

Cayman Islands
Stuarts Humphries

Not applicable.

7. 5. What are the respective obligations and liabilities of the parties under the security interest?

Cayman Islands
Stuarts Humphries

These will be regulated by the drafting of the underlying security agreement.

7. 6. In the event of default, what options are available to enforce the security interest? Is self-help available in your jurisdiction or must enforcement action go through the courts? Are there insolvency regimes such as conservatorship or examinership that impose an automatic stay on the exercise of self-help remedies?

Cayman Islands
Stuarts Humphries

Enforcement options will depend on the rights and remedies as set out in the relevant security document. The Cayman Islands is a creditor-friendly jurisdiction and, pursuant to Section 142 of the Companies Act, investors can enforce their contractual rights without making an application to a court in the Cayman Islands.

7. 7. Will local courts recognise a foreign court judgment in favour of an investor?

Cayman Islands
Stuarts Humphries

The Cayman Islands courts will recognise and enforce foreign judgments and arbitral awards. The Cayman Islands is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The procedure for enforcing a foreign arbitral award is prescribed in the Foreign Arbitral Awards Enforcement Law (1997 revision). Judgments or orders of a foreign court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party, may be enforced at common law in the Cayman Islands.

7. 8. If the servicer becomes insolvent, will an enduring power of attorney/mandate granted by the servicer in favour of the secured parties be recognised and enforceable post-insolvency of the servicer?

Cayman Islands
Stuarts Humphries

Yes. An enduring power of attorney/mandate granted by the servicer in favour of secured parties is recognised and enforceable. Typically, an assignment can provide for receivables to be automatically assigned to the purchaser as and when they come into existence.

There is no specific doctrine or legal provision in the insolvency laws of the Cayman Islands that allows for substantive consolidation. 'Substantive consolidation' refers to the merging of assets and liabilities of separate legal entities within a group during bankruptcy, liquidation, or other insolvency proceedings. However, in very rare and specific situations, the Cayman Islands courts may approve a pooling arrangement. This authority stems from the power of a court-appointed liquidator in the Cayman Islands to negotiate compromises or arrangements with creditors, subject to court approval. This jurisdiction is exercised only under exceptional circumstances, where the affairs of two or more companies or entities are so intertwined that combining their assets and liabilities is the most practical course of action.

7. 9. Do limited recourse, non-petition and subordination provisions bind creditors of SPVs in your jurisdiction and what are the applicable qualifications?

Cayman Islands
Stuarts Humphries

Yes. Cayman Islands courts recognise limited recourse, non-petition and subordinate provision.

In general, a Cayman Islands court will acknowledge and uphold a contractual limited recourse provision that is valid, binding and enforceable according to its governing law. If the contractual provision is governed by Cayman Islands law, even though there is no existing precedent on this specific matter, it is our belief that a Cayman Islands court will enforce such a provision if it is clearly articulated to that effect. This perspective is informed by prior English case law, which, while not legally binding, carries substantial persuasive weight.

The Cayman Islands has implemented Section 95(2) of the Companies Act (As Revised), which specifies that a Cayman Islands court must dismiss or postpone the hearing of a winding-up petition if the petitioner is obliged by a contract not to file such a petition against the company. This provision is also applicable to an exempted limited partnership under the Exempted Limited Partnership Act (As Revised). Additionally, Section 39 of the Limited Liability Companies Act (As Revised) contains a similar provision concerning limited liability companies.

8.Registration and disclosure

8. 1. What public disclosure and reporting requirements apply to securitisations in your jurisdiction?

Cayman Islands
Stuarts Humphries

There are no public disclosure and reporting requirements in the Cayman Islands unless:

- the SPV related to the securitisation is offering securities to the public in the Cayman Islands; or
- the securities in question are listed on the Cayman Islands Stock Exchange.

8. 2. What registration requirements, if any, apply to securitisations in your jurisdiction?

Cayman Islands
Stuarts Humphries

There are no registration requirements in the Cayman Islands for securitisations.

8. 3. Is there any requirement to notify obligors of a securitisation? If so, how is this effected?

Cayman Islands

There are no requirements to notify obligors of a securitisation in the Cayman Islands.

9. Credit rating agencies

9. 1. What requirements and restrictions apply to credit ratings agencies in your jurisdiction? Are there specific provisions that regulate their relationship with issuers?

Cayman Islands
Stuarts Humphries

The Cayman Islands has no requirements or restrictions which apply to credit rating agencies; and there are no rules which regulate the relationship between issuers and credit rating agencies.

Where applicable, compliance with Securities and Exchange Commission Rule 17g-5 will be required by Cayman Island issuers.

9. 2. What are the main factors that rating agencies consider when rating the securities of the issuer?

Cayman Islands
Stuarts Humphries

Rating agencies will take particular note of the following factors when deciding what credit rating to assign to a securitisation transaction:

- whether any legal issues may affect the cash flow of the transaction;
- the overall creditworthiness of the asset pool being scrutinised; and
- whether the securitised assets can be sufficiently separated from the transferor so that the insolvency of the transferor will not affect the creditworthiness of the assets.

Additionally, Standard and Poor's has introduced legal criteria which address SPVs incorporated in the Cayman Islands, given that the Cayman Islands has no corporate rehabilitation procedure. These will ordinarily give the company the benefit of a moratorium on the payment of its secured debts during the restricted period. Because of this, rating agencies have taken the following steps to ensure that the assets are protected against insolvency risks:

- restricting the power of the shareholders to wind up the SPV voluntarily and to amend the memorandum and articles of association of the SPV;
- establishing fixed security interests over the asset pool;
- imposing contractual separateness covenants;
- ensuring that there are contractual limitations on reorganisations or changes of ownership;
- imposing contractual debt limitations; and
- imposing contractual restrictions on the activities of the SPV.

All of these concerns can be easily dealt with in the drafting of the transaction documents. As long as the underlying asset pool is otherwise creditworthy, an SPV incorporated in the Cayman Islands can achieve a high credit rating with adequately comprehensive transaction documentation.

10. Taxation

10. 1. What tax considerations should be borne in mind from the perspective of the originator? What strategies, if any, are available to mitigate them?

Cayman Islands
Stuarts Humphries

The Cayman Islands imposes no form of income, corporate or capital gains tax. Additionally, there are no domestic originators in the Cayman Islands.

Both the originator and the issuer should be aware that a stamp duty tax will arise in the Cayman Islands if the relevant instrument for the transaction is signed in, or is physically brought into, the Cayman Islands after it is signed. To prevent this, it is common for documents to be executed by power of attorney outside the jurisdiction.

10. 2. What tax considerations should be borne in mind from the perspective of the issuer? What strategies, if any, are available to mitigate them?

Cayman Islands
Stuarts Humphries

See question 10.1.

It is recommended that the issuer entity apply to the Cayman Islands Monetary Authority for a tax undertaking. A tax undertaking is for a period of 20 years and ensures that, from the date of the undertaking, no such law enacted in the Cayman Islands after that date which imposes taxes on an entity (including its shares or debentures) will apply to the issuer.

10. 3. What tax considerations should be borne in mind from the perspective of investors? What strategies, if any, are available to mitigate them?

Cayman Islands
Stuarts Humphries

Investors should consult tax professionals to properly understand the tax consequences, if any, of investing in securitisations which are undertaken in the Cayman Islands. There may be tax consequences in their country of residence (if not resident in the Cayman Islands) which Cayman Islands counsel cannot advise on.

Investors should also be aware that the Cayman Islands is a party to several tax information exchange agreements and is subject to both the US Foreign Account Tax Compliance Act and the Common Reporting Standard. If a reporting entity is incorporated in the Cayman Islands, it will be bound to provide information about its investors to the Cayman Islands Tax Information Authority when required by law to do so.

11. Trends and predictions

11. 1. How would you describe the current securitisation landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

Cayman Islands
Stuarts Humphries

The Cayman Islands continues to be the jurisdiction of choice for offshore securitisation transactions, thanks to:

- its sophisticated telecommunications systems;
- an abundance of professional service providers; and
- its economic and political stability.

Legislative reforms happen often in the Cayman Islands. However, there are no anticipated reforms in the next 12 months which would alter the way in which securitisation transactions are conducted in the jurisdiction – particularly due to the most recent legislative developments in the past several years to the Companies Act and the introduction of limited liability company vehicles.

12. Tips and traps

12. 1. What are your top tips for the smooth conclusion of securitisations and what potential sticking points would you highlight?

Cayman Islands
Stuarts Humphries

To ensure that securitisations conclude smoothly in the Cayman Islands, we recommend that:

- the SPV be bankruptcy remote;
- the SPV be properly organised to ensure that:
 - the treatment of the underlying asset pool is off-balance sheet; and
 - there will be no consolidation with the originator;
- the constitutional documents of the SPV be drafted in a way that ensures the SPV can only enter into the specific securitisation transactions;
- the purpose or charitable trust be restricted from:
 - selling its shares in the SPV;
 - amalgamating the SPV;
 - continuing the SPV in another jurisdiction; or
 - making structural changes to the SPV; and

- accounts be audited annually and the SPV retain enough funds at the end of the transaction to pay for liquidation and winding-up.



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