SECURITIZATION IN CHINA: OVERVIEW & ISSUES

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AGENDA

• CBRC Scheme.

• CSRC Scheme.

• Issues.

• Q&A.
• Trust Law (enacted April 2001).

• Administration of Pilot Projects for Securitization of Credit Assets Procedures (April 2005), jointly promulgated by PBOC and CBRC.

• Measures for Pilot Supervision and Administration of Securitization of Credit Assets of Financial Institutions (November 2005), promulgated by CBRC.
CBRC SCHEME - Trust

- Trust contract.
- Trust property.
CBRC SCHEME - Players

• Sponsor (originator).
• Servicer.
• Trustee.
• Custodian.
• Underwriter.
• Securities registration and depository institution.
• ABS investors.
• Credit enhancers.
CBRC SCHEME - Offering

• CBRC approval.
• Interbank bond market.
• Disclosure of information.
• Holders of ABS.
CSRC SCHEME - Laws & Regulations

• Civil Law (enacted April 1986).

• Contract Law (enacted March 1999).

• Interim Measures on Managing Client Assets by Securities Firms (2005), promulgated by CSRC.

• Administrative Provisions on the Asset Securitization Business of Securities Companies (2013), promulgated by CSRC.
CSRC SCHEME - Schemes

• 2005: "selective asset management plans" (SAMPs).

• 2013: "special schemes."

• Underlying assets.
CSRC SCHEME - Players

• Originator.

• Manager.

• Custodian.

• Investors.
CSRC SCHEME - Offering

• CSRC approval.

• Disclosure statement.

• Asset backed securities.

• Stock exchanges, inter-agency offer & transfer system, OTC.
ISSUES - Legal Isolation under Trust Law

• Entrustment - transfer of ownership.

• Transfer.

• Integrity of the trust.

• Commingling of trust property.
ISSUES - Legal Isolation under Enterprise Insolvency Law

• Executory contracts.

• Suspect periods.

• Clawback provisions.

• Recharacterization risk.
ISSUES - Legal Isolation under Civil Law

• Entrustment - transfer of possession.

• Integrity of the "special scheme."

• Commingling of underlying assets.
ISSUES - Legal Isolation under Contract Law

• Transfer of ownership.

• Legal true sale.

• Notification to obligors.
ISSUES - Legal Isolation under "Special Purpose Trusts" and "Special Schemes"

• SPT not a legal entity.

• Special scheme not a legal entity.

• Bankruptcy / liquidation of the trustee.

• Bankruptcy / liquidation of the manager.
ISSUES - Constitutional Issues

- CBRC and CSRC regulations untested in bankruptcy.

- Court precedents not binding.

- Ultimate power to interpret laws.

- Civil law jurisdiction.

- Separate judicial and legal careers.
ISSUES - Other Legal Issues

- Security Law & Property Rights Law.
- Future flows.
- Securities laws & regulations.
- Tax issues.
ISSUES - Other Regulatory Issues

• CBRC regulations.

• Foreign exchange controls.

• Swap regulatory issues.

• Third party servicing.
ISSUES - Accounting Issues

• Off balance sheet treatment.
• Transfer of financial assets.
• Consolidation of SPVs.
ISSUES - Market and Pricing Issues

• Mispricing of assets.

• Non-transparency of assets.

• Lack of data on assets.

• Market liquidity and cheap funding sources.

• Concentration in banking sector.

• Fees.
CONCLUSIONS

• The best "pseudo securitization" scenario.

• Secondary markets.

• Special PRC securitization statute.

• Private structured finance deals.