International Comparative Legal Guides

Securitisation 2021

A practical cross-border insight into securitisation work

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1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a binding contract arise as a result of the behaviour of the parties?

Although there are certain exceptions, in general, contracts in Spain do not need to be evidenced by a formal contract, i.e., verbal contracts are valid and enforceable in Spain, with certain exceptions (for example, contracts entered into with consumers need to be in written form). In addition, under certain circumstances and pursuant to the relevant legislation, contracts need to be executed before a Public Notary in order to be enforceable.

That said, the sale of goods or services does not necessarily need to be evidenced by a formal receivables contract. In this regard, invoices may be sufficient to evidence the existence of the contractual relationship. On the other hand, a receivable contract may be deemed to exist as a result of the behaviour of the parties, since tacit contracts are generally accepted in Spain.

However, written form is advisable in order to evidence the conditions under such verbal and tacit contracts.

1.2 Consumer Protections. Do your jurisdiction's laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

Limits on interest rates. Spanish laws do not set out specific limits on interest rates other than a general criterion on which interest has to be deemed usurious.

The Act of 23 July, 1908, on invalidity of usurious loan agreements, establishes that any loan setting out an interest rate significantly higher than what is considered the normal money-rate of interest and manifestly disproportionate according to the circumstances of the case will be invalid. The interpretation and application of this general parameter has been analysed in a Supreme Court decision in relation to consumer-related transactions. The court considered that the annual percentage rate should be compared against the "normal money-rate". The latter refers to the statistics published by the Bank of Spain on interest rates applied by credit institutions in Spain. This decision provides objective criteria in determining whether an interest rate shall be deemed usurious.

Additionally, please note that Act 5/2019, of 15 March, on mortgage loans ("**Act 5/2019**"), transposing Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property, applies in case of loans granted on a professional basis to individuals (or guaranteed by individuals), being (i) credit agreements secured by a mortgage on residential immovable property, or (ii) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building in case the borrower or guarantor is a consumer. That piece of regulation sets out an indefinite derogation of any provision in loans and credit agreements limiting the effect of a reduction in the floating interest rate (i.e., the so-called "*cláusulas suelo*"). Additionally, Act 5/2019 expressly sets out that the interest rate (reference rate plus margin) cannot be negative, which puts an end to the debate on the remuneration obligation of the lender *vis-à-vis* the borrower in the scenario of negative interest rates.

Limits on late interest. There are several limitations to the principle of party autonomy, e.g.:

- In case of loans subject to Act 5/2019, a limit equal to the interest rate agreed in the loan plus 3%.
- In case of loans subject to Act 16/2011, of 24 June, on Consumer Credit Agreements ("**Act 16/2011**"), the maximum applicable rate for all current account overdrafts of two-and-a-half times the legal interest.

Additionally, pursuant to the case law of the Court of Justice of the European Union, in case a national court considers that a particular provision under a contract shall be deemed null and void (which could be the case of a late interest clause), the judge may not construe that provision by applying the default rule under the relevant national law.

Mortgage loans – low-income debtors. Additionally, Royal Decree-Law 6/2012, of 9 March, as amended by Act 25/2015, 28 July ("**RDL 6/2012**") sets out certain measures to protect low-income debtors, like (i) a voluntary accession to a good practice code by credit institutions and professional lenders, involving the mandatory application of a number of provisions for the adhered institution, and (ii) a limitation to the maximum default interest applicable to any residential mortgage loans granted before the entry into force of RDL 6/2012 regarding low-income debtors. The cap interest is equal to the ordinary interest agreed in the loan plus 2%, irrespective of whether the relevant institution has acceded to the above-mentioned good practice code.

On the other hand, there has been much controversy on clauses affecting consumers. In this respect, Spanish courts are declaring some clauses within mortgage loan agreements abusive, and therefore null and void (e.g., certain clauses setting forth a floor instrument and clauses regarding assumption of costs).

Revolving credit cards. The Spanish Supreme Court determined, in the context of the *Wizink* case, that 20% is the annual interest rate that must be considered a threshold in order to determine whether, in this type of cards, a rate is usurious.

Measures taken to tackle the effects of COVID-19. As referred to in question 8.4 below, as a result of the COVID-19 outbreak, new legislation has been enacted in Spain, setting certain emergency measures to tackle the social and economic impact of the crisis. In particular, a moratorium period has been established for rental arrears, for mortgage debt and for loans not secured by a mortgage, in case the lessee or the debtor, as the case may be, is in vulnerable economic circumstances.

On the other hand, as a general measure in the consumer sector, consumers and users are entitled to terminate any purchase agreement and services they have entered into if it is impossible to perform the agreement as a result of the COVID-19 outbreak and the parties are unable to agree on a proposal to review the agreement.

Other limitations. Aside from the general Spanish legislation on debtors' protection, some Spanish regions, acting in their legislative capacity in the area of consumer affairs, have enacted their own regional law in consumer protection, although some of those legal provisions have been challenged alleging their unconstitutionality and are pending in the Spanish Constitutional Court.

Withdrawal right. Generally, Royal Legislative Decree 1/2007, of 16 November, approving the consolidated text of the Act for the Protection of Consumers and Users, sets out that consumers shall be entitled to cancel an agreement (and the receivables thereunder) for 14 calendar days after the delivery of the goods or the execution of the agreement, as the case may be, unless a different cancellation period is set out in the applicable sectoral legislation. In case the provider of the services has not duly informed the consumer of the existence and characteristics of the withdrawal right, the term shall be 14 working days since the seller has duly fulfilled this information obligation, up to a maximum of 12 months.

Borrowers under consumer financing agreements and customers of financial services following distance marketing activities by the financial institution are entitled to very similar withdrawal rights. Under Act 16/2011, borrowers may trigger the agreement without giving any reason within a period of 14 calendar days as from the later of the following dates: (i) the execution date of the credit agreement; and (ii) the date of delivery of certain financial information and terms by the lender to the consumer. The creditor shall not be entitled to any compensation other than payment of the principal and interest accrued from drawdown of the credit until full repayment.

Additionally, and on top of the withdrawal right referred to above, Act 5/2019 sets out limits to the early repayment fee in case of a mortgage loan granted to or guaranteed by an individual.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

Sale. Except otherwise provided in the contract conditions ("*pliegos de condiciones*"), the transfer of the accrued receivables will be enforceable against the Spanish governmental entity or company within the Spanish public sector once notice of transfer of such receivables has been duly served (with proof of delivery) upon the relevant debtor, in accordance with the Spanish Civil Code, the Spanish Commercial Code and the Act 9/2017, of 8 November 2017, regulating Contracts of Public Sector by means of which the European Directives 2014/23/EU and Directive 2014/24/EU, in force since 9 March 2018, are transposed into Spanish legislation (the Royal Legislative Decree 3/2011 on Contracts of the Public Sector, formerly in force, regulated this matter similarly) and the Royal Legislative Decree 3/2011 on Contracts of the Public Sector. This includes the need of servicing a notice to the debtor (i.e., to the government entity or public company) in order to ensure that the assignment is enforceable *vis-à-vis* the same. It is worth noting that a Supreme Court ruling, dated 22 January 2020, raised the possibility to assign receivables deriving from administrative contracts (i.e., those contracts entered into by government entities with the purpose of covering needs directly linked to the public authority they have been conferred, including contracts for works, concessions for works, concessions for services, supply and services) while the goods or services have not been delivered and the contractor holds an effective right to collect.

Collection. The collection of receivables arising from a contract signed with a governmental authority may be subject to the specific regulation applicable to such governmental entity. This regulation may provide for mandatory provisions of law, the application of which cannot be waived by agreement. This regulation may include:

(1) the legal right of the governmental entity to claim for itself or for some of its assets (i.e., the assets allocated to, or used in, a public service) immunity from suit, execution, attachment or other legal processes in Spain;
(2) the obligation of the governmental entity not to exceed certain limitations; and
(3) the need for the payment of the receivable to be included in the relevant budget law of that entity for the relevant year.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in your jurisdiction that will determine the governing law of the contract?

Regulation (EC) No 593/2008 ("**Rome I Regulation**"), which directly applies in Spain, sets out the law applicable to contractual obligations on civil and business matters.

Pursuant to article 3 of the Rome I Regulation, parties may choose the applicable law according to the principle of party autonomy. In the case that there is no explicit choice, the applicable law will be determined in light of the circumstances.

In the case of a sale of goods or the provision of services, when there is no explicit choice, the applicable law is the one of the countries where the seller or the provider of services has its habitual residence. However, in case there is another country that is manifestly more closely connected, the law of the most closely connected country shall be deemed applicable instead.

Notwithstanding the above, there are certain exceptions under the Rome I Regulation to those general rules, in particular when there is a contractual asymmetry. For example, the applicable law will be the one of the countries of habitual residence of the obligor in the case: (i) the obligor qualifies as a consumer; and (ii) the seller or provider of services performs the contract's business activities in the country of the consumer, or directs its business activities to that country.

2.2 Base Case. If the seller and the obligor are both resident in your jurisdiction, and the transactions giving rise to the receivables and the payment of the receivables take place in your jurisdiction, and the seller and the obligor choose the law of your jurisdiction to govern the receivables contract, is there any reason why a court in your jurisdiction would not give effect to their choice of law?

No, there is no reason why a court in Spain would not give effect to that choice of law.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in your jurisdiction but the obligor is not, or if the obligor is resident in your jurisdiction but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in your jurisdiction give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

Yes, since, pursuant to article 3 of the Rome I Regulation, the parties may choose a law not linked to the factual circumstances of the contract. In addition, the Rome I Regulation gives the possibility to choose different laws for different parts of the contract, and the possibility to change the applicable law during the contract's validity, if this does not affect third parties' rights.

However, according to article 9 of the Rome I Regulation, the principle of party autonomy has certain restrictions, such as restrictions due to the overriding mandatory provisions. In this regard, the Court of Justice of the European Union (C-369/96 and C-135/15) has deemed "overriding mandatory provisions" as the rules that a country considers essential for safeguarding its public interest.

In this regard, the Spanish courts may refuse the application of the chosen law if the relevant provisions are clearly contrary to Spanish public policy. In this situation, the relevant Spanish court would apply the relevant provisions under Spanish law instead of those applicable under the chosen foreign law.

On the other hand, the principle of party autonomy may be limited when the chosen law is the law of a non-EU Member State and all the relevant elements in the contract are located in one or more Member States. In this regard, the choice of the parties regarding the applicable law may not prejudice the application of mandatory provisions under EU law.

That said, this restriction would not normally apply in case of commercial relationships such as those between two professionals (the seller and the obligor under a receivables contract), taking into account the regular content of those agreements.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does your jurisdiction's law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., your jurisdiction's laws or foreign laws)?

The sale of receivables does not need to be governed by the law applying to the receivable itself. The principle of party autonomy would apply herein pursuant to articles 3 and 14 of the Rome I Regulation, which allow the seller and the purchaser to apply to the sale contract a different law than that applying to the receivable itself.

In these cases, pursuant to article 14.2 of the Rome I Regulation, the law governing the receivable would rule: (i) its assignability; (ii) the relationship between the assignee and the obligor; (iii) the conditions under which the assignment or subrogation may be invoked against the obligor; and (iv) whether the obligations of the obligor have been discharged.

However, the freedom of choice is subject to certain limits:

(1) All the relevant elements are located in another country. In case all the relevant elements of the situation are located in a country different from the one of the chosen law, the choice of the parties may not prejudice the application of mandatory provisions of that other country. Accordingly, the mandatory provisions of that other country will prevail over the parties' choice.

(2) Payment Instruments. In the case of a transfer of negotiable instruments executed and delivered in Spain, such as bills of exchange and promissory notes, the law applying to the rights and obligations of the parties shall be Spanish law.

(3) Security interests. In case the obligations under the transferred receivables are secured by a security interest granted over an asset located in Spain (such as a real estate mortgage or a pledge over the shares of a Spanish company), mandatory Spanish law provisions shall apply on the perfection and enforceability of that security interest. Those provisions will govern, additionally, the assignment of that security interest for the benefit of third parties.

3.2 Example 1: If (a) the seller and the obligor are located in your jurisdiction, (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of your jurisdiction to govern the receivables purchase agreement, and (e) the sale complies with the requirements of your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

According to article 3 of the Rome I Regulation, in principle the chosen law (i.e., Spanish law) would apply to both the sale agreement and to the relationship with the obligor. Accordingly, provided that the transfer agreement complies with the requirements under Spanish law, as mentioned below in questions 4.1 and 4.4, a Spanish court would recognise that sale as being effective against the seller and the obligor.

Regarding the effects against other third parties (such as creditors or insolvency administrators of the seller and the obligor), the Rome I Regulation does not solve this question (C-548/18). In this regard, the Proposal for a Regulation of the European Parliament and of the Council on the law applicable to third-party effects of assignments of claims (COM(2018)96 final, Brussels, 12.3.2018) prevails in its article 4 as a general rule (unless otherwise provided in the Regulation) that the third party of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the material time. Please note that this Proposal is not yet in force.

In Spain there is a reference to this issue in the local law governing financial guarantees, i.e., Royal Legislative Decree 5/2005 ("**RDL 5/2005**"), dated 11 March, which transposes, amongst others, the Directive 2002/47/EC of the European

Parliament and of the Council of 6 June 2002 on financial collateral arrangements. This law expressly sets out that where credit rights constitute financial collateral, the effectiveness of such assignment against the obligor and against third parties shall be determined in light of the law governing the assigned receivable.

The majority of scholars consider that the solution adopted with respect to financial collateral in RDL 5/2005 should apply in other cases where a receivable is assigned by way of security or pledge, and by extension, to any kind of ordinary assignment.

In conclusion, it is likely that under the circumstances described in this question, a Spanish court would recognise the sale as being effective *vis-à-vis* third parties if the sale complies with the relevant requirements under Spanish law.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

Please refer to questions 3.1 and 3.2 above on the law applicable to the assignment agreement, the conditions under which the assignment may be invoked against the obligor and the effectiveness of such assignment against third parties. Accordingly, a Spanish court would recognise that sale as being effective against the seller and the obligor in the case the legal requirements under Spanish law, as described in questions 4.1 and 4.4 below, are met.

Notwithstanding the above, in the case where the obligor was not located in Spain, since the Rome I Regulation has not been further developed, in order to ensure recognition in the country where the obligor is located it would be advisable to comply, additionally, with the requirements that the law of that country imposes for the enforceability of the transfer *vis-à-vis* third parties.

3.4 Example 3: If (a) the seller is located in your jurisdiction but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with your jurisdiction's own sale requirements?

Please refer to questions 3.1 and 3.2 above on the law applicable to the assignment agreement, to the conditions under which the assignment may be invoked against the obligor and the effectiveness of such assignment against third parties.

Provided that the transfer agreement complies with the chosen applicable law (the law of the country where the obligor is located), a Spanish court would recognise that sale as being effective against the seller. However, that foreign law should be evidenced to the Spanish court.

In addition, since the seller is located in Spain, it would be advisable, in order to ensure recognition by Spanish courts, to comply not only with the requirements under the law of the obligor's country but also with the requirements that Spanish law imposes regarding the enforceability of the transfer *vis-à-vis* third parties.

3.5 Example 4: If (a) the obligor is located in your jurisdiction but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in your jurisdiction recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with your jurisdiction's own sale requirements?

Please refer to questions 3.1 and 3.2 above on the law applicable to the assignment agreement, to the conditions under which the assignment may be invoked against the obligor and the effectiveness of such assignment against third parties.

Provided that the transfer agreement complies with the chosen applicable law (the law of the country where the seller is located), a Spanish court would recognise that sale as being effective against the obligor. However, that foreign law should be evidenced to the Spanish court.

In addition, since the obligor is located in Spain, it would be advisable, in order to ensure recognition by Spanish courts, to comply not only with the requirements under the law of the seller's country but also with the requirements that Spanish law imposes regarding the enforceability of the transfer *vis-à-vis* third parties.

3.6 Example 5: If (a) the seller is located in your jurisdiction (irrespective of the obligor's location), (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in your jurisdiction and any third party creditor or insolvency administrator of any such obligor)?

Please refer to questions 3.1 and 3.2 above on the law applicable to the assignment agreement, to the conditions under which the assignment may be invoked against the obligor and the effectiveness of such assignment against third parties.

Provided that the transfer agreement complies with the chosen applicable law (the law of the country where the purchaser is located), a Spanish court would recognise that sale as being effective against the seller. However, that foreign law should be evidenced to the Spanish court.

In addition, since the seller is located in Spain and the receivable is governed by Spanish law, it would be advisable, in order to ensure recognition by Spanish courts, to comply not only with the requirements under the law of the purchaser's country but also with the requirements that Spanish law imposes regarding the enforceability of the transfer *vis-à-vis* third parties.

4 Asset Sales

4.1 Sale Methods Generally. In your jurisdiction what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

There are three different methods to assign receivables under Spanish law, depending on the characteristics of the assignor and the assignee:

(1) Ordinary assignments. Pursuant to the Commercial Code and the Civil Code, the seller remains liable *vis-à-vis* the purchaser for the existence of the receivable and validity of the legal title of the seller. Unless expressly agreed in the assignment agreement between the parties, the purchaser will not have recourse against the seller, i.e., the seller will not be liable before the purchaser in case of insolvency of the obligor.

(2) Special assignments. Assignments under the Third Additional Provision of Act 1/1999, of 5 January, on Capital-Risk Entities ("**Act 1/1999**"), although normally structured as an ordinary assignment, in order to benefit from the special regime for insolvency purposes set out in question 6.3 below, they must meet the following conditions:

(a) the assignor shall be an entrepreneur and the assigned receivables shall arise from its business activity;

(b) the assignee shall either be a credit institution or a securitisation fund;

(c) the receivables to be assigned shall either (i) exist on the date that the assignment agreement is executed, or (ii) arise from the business activity of the assignor within a maximum period of one year from the execution date of the assignment agreement (or, alternatively, the assignment agreement shall clearly identify the obligors under those receivables);

(d) the assignee shall pay to the assignor the agreed price either upon closing or on a deferred basis, excluding the cost of the services provided; and

(e) in the case the assignment agreement does not envisage the recourse against the seller in case of insolvency of the obligor, it must be evidenced that the purchaser has paid to the seller, in whole or in part, the agreed price prior to the maturity of the assigned receivables.

(3) Spanish securitisation fund ("**FTs**"). Act 5/2015 on promoting business financing ("**Act 5/2015**") sets out the following requirements to the assignment of receivables to FTs, special purpose vehicles that may purchase a portfolio of receivables and issue asset-backed notes, and need the prior authorisation of and registration with the Spanish National Stock Market Commission (the "**CNMV**"):

(a) the assignor shall have audited annual accounts for the last two financial years;

(b) the assignor shall set out in its annual reports the assignment transactions (whether regarding present or future receivables) it has performed;

(c) assignment transactions shall be executed in a written document; and

(d) any new incorporation of assets shall be notified to the CNMV.

As referred to in question 7.1 below, please note that the term "securitisation" is restricted to structured transactions that meet the requirements set out in the Regulation (EU) No 2017/2402 of the European Parliament and of the Council, of 12 December 2017, laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (the "**Securitisation Regulation**"). It is expected that Act 5/2015 will be adjusted in the near future in order to align it with the Securitisation Regulation.

Fondo de Activos Bancarios ("**FAB**"). Act 9/2012, of 14 November, on restructuring and resolutions of credit institutions ("**Act 9/2012**") sets out the regime of FABs, special purpose vehicles, lacking legal personality, subject to a privileged legal and tax regime whose assets were originally bank assets. The assignor of the assets to be purchased by a FAB is exclusively the Company for the Management of Assets Proceeding from Restructuring of the Banking System ("**SAREB**"), a partially government-owned company.

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

There are no formalities generally required for perfecting a sale of receivables, regardless of whether it is an ordinary assignment, a special assignment or an assignment to an FT (except for those set forth in question 4.1 above) or to a FAB. Notwithstanding the foregoing, written form is standard in Spain.

Additionally, pursuant to article 1280 of the Spanish Civil Code, in case the receivables are executed in a public document, any party may legally require the other party to execute the assignment of those receivables by means of a public document. However, in case that assignment is not executed in a public document, it will not affect the validity of the assignment between the parties.

In addition, pursuant to article 1526 of the Spanish Civil Code, the assignment of a receivable will be fully effective *vis-à-vis* third parties upon the date deemed certain. In this regard, articles 1218 and 1227 of the Spanish Civil Code set out that the execution date of a document will be deemed certain in case such document is executed before a Spanish Public Notary.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

Payment Instruments. In Spain, Payment Instruments include bills of exchange ("*letras de cambio*"), promissory notes ("*pagarés*") and other analogous instruments ("*efectos cambiarios*") included in Act 19/1985, of 16 July, on Exchange and Cheques ("Act 19/1985"), which regulates the issuance and transfer of such instruments. In general, Payment Instruments may be transferred by means of:

(1) Endorsement ("*endoso*") is the expression that Act 19/1985 uses when referring to a written statement issued by the seller in the title itself. A Payment Instrument may be endorsed by placing the signature of the endorser on the back of the Payment Instrument and delivering it to the endorsee. The payee is the first possible endorser. The endorsee becomes the holder of the instrument and, thus, it has the right to claim payment of the Payment Instrument at the maturity date. An endorsee also has the right to endorse the instrument again. In the endorsement, the endorser may set out a particular endorsee or endorse the Payment Instrument in blank (i.e., by a mere signature on the back of the Payment Instrument).

(2) Ordinary assignment. The maker may include in a Payment Instrument the words "not to order", or an equivalent expression such as "not transferable" or "not negotiable". In this case, the instrument cannot be endorsed and it can only be transferred by ordinary assignment in a different contract by means of which the credit is transferred.

Although there is no risk of losing the fast-track proceedings that Spanish civil procedural law foresees to claim for the credit included in the Payment Instrument (i.e., "*procedimiento cambiario*"), transferring through endorsement brings more advantages than the ordinary assignment (no personal causes of opposition may be alleged by the debtor/to initiate an action the endorsee only needs the Payment Instrument to justify itself as a legitimate creditor).

Regarding the tax regime of the transfer of these "*efectos cambiarios*", please see question 9.3 below.

Mortgage loans. The requirements for the sale of a mortgage loan include the execution of the transfer in a public document executed before a Spanish Public Notary and the registration of that transfer within the relevant Land Registry. In case the sale of the mortgage loan does not meet the two mentioned conditions, the transfer of the loan will not be effective *vis-à-vis* third parties and the enforcement of the mortgage may be seriously hindered. On the other hand, in case the loan was secured by a mortgage or a non-possessory pledge over movable assets, the previous conditions (public document and registration) would apply as well. However, in such case the registration shall be within the Movable Assets Registry ("*Registro de Bienes Muebles*") instead of the Land Registry.

On the tax side, the transfer of a mortgage loan (either over a property or over a movable asset) in a public deed ("*escritura*") accrues stamp duty tax. Unlike mortgage loans, loans secured by non-possessory pledges may be transferred by means of a notarial deed (i.e., the "*póliza*") before a Spanish Public Notary, differently from the public deed. The execution of that agreement in a "*póliza*" would avoid the accrual of stamp duty tax.

In case mortgage loans are granted by a credit institution and secured by a mortgage over a property, Act 2/1981 on the Mortgage Market Act ("**Act 2/1981**") and its development regulation (Royal Decree 716/2009, of 24 April, "**RD 716/2009**") set out that the credit rights arising from mortgage loans with the following characteristics may be transferred through the issuance of a special type of transferable security: mortgage participations ("*participaciones hipotecarias*"), hereinafter, "**PH**":

- Loans shall be secured with first-ranking mortgages.
- The value of the secured loans shall not exceed 60% of the appraised value of the property (or 80% in case of residential property).
- Mortgaged properties need to be insured against damages.
- Loans cannot be secured by assets expressly excluded according to RD 716/2009; this includes loans secured with mortgages granted over usufruct rights, administrative concessions and surface rights.

In case the mortgage loans do not meet all the requirements set forth in Chapter II to Act 2/1981 and RD 716/2009, the credit rights may be transferred by means of mortgage transfer certificates ("*certificados de transmission de hipoteca*"), hereinafter, "**CTH**", a different type of transferable security that only qualified investors can hold.

Both PH and CTH are subject to a privileged regime:

- **Registration with the Land Registry**. In case subscription and possession of PH and CTH are restricted to professional investors, the issuance of PH or CTH shall not be subject to a marginal notation with the Land Registry. However, in any event, the issuer remains the lender on record in the Land Registry, being the holder of the CTH or the PH the beneficial owner of those mortgage loans.
- **Tax regime**. The issuance and transfer of PH and CTH is a transaction exempt from stamp duty tax.
- **Insolvency regime**. In the case of insolvency of the credit institution, the issuance of the PH or the CTH would only be subject to the challenge by the insolvency authorities if they prove fraud.

Pursuant to Act 2/1981 and RD 716/2009, the issuer of the PH or CTH is required to provide custody and administration of the mortgage loans and as such it shall transfer to the holders of the PH and the CTH any amounts received regarding the underlying loans, in the amount corresponding to the percentage of its participation in the mortgage loan. In the event the obligor fails to pay the mortgage loan, the holder of the PH or CTH has certain powers as holder of the credit rights regarding the underlying mortgage loan. For example, the holder of the PH or the CTH, as the case may be, may compel the issuer to commence foreclosure on the mortgage and has a subsidiary power to enforce the mortgage in the amount corresponding to the percentage of its participation in the mortgage loan in the case the issuer of the PH or CTH does not commence the procedure within 60 days.

Consumer loans. There are no particular requirements for sale and perfection regarding consumer loans, although pursuant to Act 16/2011, in the case the original lender ceases to be the servicer under that loan, the assignment shall be notified to the consumer.

Debt securities. Debt securities represented in book-entry form shall be transmitted by accounts transfer in addition to the execution of the transfer agreement.

Debt securities represented in registered form shall be transferred either through endorsement of the relevant title or by means of an ordinary assignment.

Debt securities represented in bearer form shall be transmitted by physical delivery of the title.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

General. Consent of the obligor is not required to perfect a valid transfer of a receivable, unless otherwise agreed by the parties of the original contract. Where consent is required in accordance with the original contract, it is unclear under Spanish law whether a transfer made without such consent remains valid and enforceable against the obligor (who will have a legal action against the original creditor for breaching the contractual provision requiring the consent), or whether the lack of consent renders the transfer invalid and, therefore, not enforceable against the obligor. Case law has not provided a consistent answer to this question.

Notification is not required to perform a valid transfer of a receivable. However, an obligor will be deemed to have validly discharged its obligations under a receivable if it has made the payment to the original creditor before it is notified, or it becomes aware, of the transfer. An obligor may also set off its obligations under a receivable against the original creditor until it is notified of the transfer. In both cases, the new creditor would not have any legal action against the obligor to claim the amount paid (or set off) and would only be entitled to claim from the original creditor the amount received by it from the

obligor, or (as applicable) the amount set off. Therefore, serving a notice of the transfer to the obligor is advisable and enhances the legal position of the new creditor.

Credit institutions. In case the seller is a credit institution either domiciled in Spain or acting by means of a permanent establishment in Spain, in order to be able to assign the credit rights (or the contractual position) under a loan agreement, the contractual document must expressly envisage that possibility and the conditions that must be observed in order to proceed with such assignment.

Government receivables. Notwithstanding the foregoing, the consent of the government (or the government agency, as the case may be) is required in case of transfer of future government receivables.

Consumers. Act 16/2011 sets out that the assignment shall be notified to the borrower except when the original lender continues providing servicing services. In any case, the borrower will be entitled to raise before the assignee any exception the consumer had *vis-à-vis* the original lender, including set-off.

On the other hand, please note that some regions (the "*Comunidades Autónomas*") in Spain have issued regional regulations in terms of consumer protection setting out the mandatory notification to the debtor in case of assignment of the credit rights under a mortgage or consumer loan to a securitisation fund.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings have commenced against the obligor or the seller? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

Spanish law does not require any specific formality in connection with servicing a notice of transfer. However, as a matter of practice, it is advisable to serve notices in a manner that helps to evidence in court the date of the notice, the date of reception of the notice by the obligor and the consent of the same. Standard procedures for such purpose include requesting a Notary Public to serve the notice or via the special mail system "*burofax*", which is offered by "*Correos*" (the Spanish Mail).

A notice may be served after the sale and no limitations apply. The parties may notify the transfer of all future receivables arising from an existing contract.

If the obligors are individuals and there is a transfer of personal data, the transfer and the notice must comply with the requirements under the Regulation (EU) No 2016/679, of 27 April, on protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (hereinafter, "**GDPR**") and the Spanish Organic Act 3/2018, of 5 December, on Personal Data Protection and Digital Rights Guarantee ("**SDPA**"). Basically, the affected individuals should be properly informed about contact details of the data controller (or their representative) as well as the data protection officer (if applicable), the purposes of the processing as well as the legal basis for it, the data categories and its addressees, the data retention periods, and the data subjects' rights (access, rectification and erasure, restriction, portability, objection and revoking consent and the right to file a complaint before the supervisory authority). Finally, it is under debate whether certain regional regulations on residential mortgage lending require, in those cases, the delivery of a notice to the borrowers under those loans.

4.6 Restrictions on Assignment – General Interpretation. Will a restriction in a receivables contract to the effect that "None of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says "This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights)?

The effect of the three proposed clauses above would not be the same.

The first and the second clause may be interpreted as prohibiting the transfer of receivables under the Agreement as both would prevent the transfer of both rights and obligations.

On the other hand, the third clause would only prevent the transfer of obligations, but not rights. Hence, in accordance with the third clause, no consent of the obligor would be required to transfer receivables under the contract.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or "seller's rights" under the receivables contract, are such restrictions generally enforceable in your jurisdiction? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If your jurisdiction recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

Please refer to the answer in question 4.4 above.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

Spanish law requires that an asset to be transferred (in this case, a receivable) is properly identified in the sale and purchase contract. However, no specific rule determines how a receivable should be identified. Hence, the identification of the receivable in the sale and purchase contract could be made in any manner that allows a court to be able to properly identify the receivable. As a matter of practice, receivables are normally identified by, at least, the name of the obligor and the invoice number or contract details.

The receivables to be sold do not have to share the same characteristics.

Where the receivables are to be transferred to an FT, Act 5/2015 sets out that a description of the assets to be transferred, setting out their characteristics, shall be provided. That said, Act 5/2015 does not specify which data would be deemed enough in order to comply with those requirements. On the other hand, Act 5/2015 sets out that, amongst the requirements for the incorporation of an FT, in principle, an audit report on the securitised assets (issued either by the managing company or by an external audit) shall be provided. Pursuant to that requirement, in principle, a detailed description on the receivables (containing data such as outstanding balances, yields, financial flows, collection terms, amortisation schedule and maturity dates) should be provided.

In the case of a transfer of credit rights under a mortgage loan to the FT through the issuance and subscription of PH and CTH, RD 716/2009 sets out that the title representing those transferable securities shall set out, for each mortgage loan, the initial loan principal, its maturity date, its amortisation schedule, its financial flows, its maturity date and the data of its registration in the relevant Land Registry. Accordingly, in the case of a transfer of credit rights pursuant to the issuance of PH and CTH, the mentioned data will be required.

Finally, regarding the common objective characteristics regarding the receivables to be sold to an FT, unlike the former regulation applicable to those funds, Act 5/2015 does not provide that the assets must be of a homogeneous nature.

A global sale of all of its receivables (or of all of its receivables, but some) are generally valid under Spanish law, although the actual transfer of the ownership of a receivable arising from a contract entered after the date of the sale may require an additional action (please see the answer to question 4.10 below).

4.9 Recharacterisation Risk. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or is there a risk that the transaction could be characterised by a court as a loan with (or without) security? If recharacterisation risk exists, what characteristics of the transaction might prevent the transfer from being treated as an outright sale? Among other things, to what extent may the seller retain any of the following without jeopardising treatment as an outright sale: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; (d) a right of repurchase/redemption; (e) a right to the residual profits within the purchaser; or (f) any other term?

A court may enquire into the economic characteristics of the transaction. Although the description of a contract as an outright sale could help a court to construe the contract as such, Spanish courts are not bound by the legal name given by the parties to a contract; instead, they could analyse the underlying real economics and nature of the transaction. Following that analysis, they may determine a different characterisation of the contract.

In performing that analysis, the court may take into consideration not only a single clause or declaration of the parties made in the contract, but also all the other provisions of that contract, the terms and conditions of ancillary contracts and even the behaviour of the parties when performing their obligations or legal rights under the same.

Credit risk and payment of the purchase price. Normally, without considering whether the transfer is agreed on a recourse or non-recourse basis, the courts have generally respected the true sale treatment of the transaction given by the parties as long as the purchase price is paid by the purchaser in full or in substantial part. Failure to advance any significant funds may lead to the courts considering that the risk attached to the receivables has not been transferred and, accordingly, the transfer may not be deemed a true sale. Equally, subjecting the obligation to pay the purchase price to the existence of enough collections may endanger the true sale objective.

Control of collections. The fact that the assignor and the assignee agree that the former retains collection responsibilities does not alter the above views. For example, the assignor may retain collection responsibilities, either:

(1) under legal compulsion, in the case of credit rights arising under mortgage loans, since RD 716/2009 sets out that the issuer of the PH and CTH shall retain collection responsibilities; or

(2) by agreement between the assignor and the assignee, in case credit rights are not assigned by way of the PH and CTH. In case of assignment to an FT, although pursuant to Act 5/2015 the managing company remains legally responsible for the collection tasks, it is customary that the assignor and the FT enter into a servicing agreement by virtue of which the assignor undertakes to perform such collection duties.

Credit risk and right of repurchase. In addition, regarding the FT, the former regulation expressly prohibited the assignor to grant any guarantee to the FT or underwrite the transaction. In contrast, Act 5/2015 expressly envisages in article 17 that the assignor shall specify in its annual reports all the deals entered into in order to underwrite that assignment transaction. Accordingly, the new regulation applicable to the FT permits more flexibility on the retention on credit risk and on the existence of a right of repurchase.

Interest rate risk. In the particular case of FTs, the assignor and the FT may enter into a hedging agreement by which the assignor retains that risk, and, in exchange, the FT undertakes to satisfy to the assignor either a fixed interest rate or a floating rate different from that applicable to the credit rights assigned to the FT.

That said, under Spanish account and capital adequacy rules, the characterisation of the transfer transaction may not coincide with the legal characterisation or the effect of that particular transaction. In this regard, certain elements of the transaction (such as the credit risk retention) shall be taken into account in order to determine whether, under account and capital adequacy rules, the transaction may be considered a true sale and, therefore, whether a sale of receivables can benefit from off-balance sheet treatment.

Residual profits. Pursuant to article 1528 of the Civil Code, the assignment of the main obligation entails the transfer of any right ancillary to it, such as security interests. Accordingly, as long as residual profits are ancillary rights under the receivable (for example, interests due because of late payment under the receivable, or any compensation due by the obligor), they would be assigned, by operation of law, to the purchaser. However, it is possible for the parties to agree otherwise, i.e., the purchaser may retain any residual profit to the seller, without necessarily jeopardising the treatment as an outright sale.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller's insolvency?

Yes, the parties may agree to continuous sales of receivables. However, under Spanish law, it is arguable whether it is possible to effectively transfer legal title over a future receivable until the

relevant receivable actually exists, or the contract from which the receivable will arise has been entered into. Therefore, such continuous sale would constitute a binding obligation of the parties to enter into future sales, but it may not have the legal effect of transferring the legal title of the future receivable unless an actual transfer is also signed after the future receivable (or the underlying contract) has come into existence (please see the answer to question 4.11 below for further reference). A continuous sale may survive a declaration of insolvency, but it will be subject to several restrictions in case of insolvency of the seller.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to *versus* after the seller's insolvency?

Ordinary assignment. As mentioned in the answer to question 4.10 above, a contract of sale of future receivables creates valid obligations binding upon the parties. However, the actual transfer of the title over future receivables may not occur until the future receivable, or the contract underlying the future receivable, actually exists. Some scholars, as well as case law, have argued that the purchaser may be considered the owner of a future receivable *ab initio,* as soon as the future receivable comes into life, and hence that the future receivable already arises as an asset of the purchaser and not as an asset of the seller. As a matter of practice, it is advisable to agree in connection with a sale and purchase of future receivables, from time to time, to enter actual transfer documents of such future receivables (e.g., every month, at the end of every quarter, semi-annually or annually). This would help to prevent any legal debate on whether the original sale and purchase agreement actually transfers the receivables only existing at the time each transfer document is signed.

Special assignment. Act 1/1999 expressly envisages the assignment of future receivables. As referred to in question 4.1 above, these receivables shall either:

(1) exist on the execution date of the assignment agreement; or
(2) arise as a result of the business activity of the assignor within a maximum period of one year from the execution of the assignment agreement or, alternatively, shall be receivables whose future obligors are clearly identified in the assignment agreement.

FT. Act 5/2015 expressly envisages the assignment of future receivables to the FT, which shall be collections of an already known or estimated amount. The assignment needs to be executed in a way that evidences, in a credible and unambiguous way, that the transfer of ownership has taken place. Act 5/2015 sets out examples of future receivables, such as flows arising out of toll road projects or any other credit rights that the CNMV determines by circular letter. On this point, Act 5/2015 envisages a new circular to be issued by the CNMV replacing Order EHA/3536/2005, of 10 November. To this day, this new circular has not yet been enacted, and therefore Order EHA/3536/2005 remains in force.

Order EHA/3536/2005 sets out that the transfer of future receivables shall meet certain requirements, such as that the assignment has to be full and unconditional ("*plena e incondicionada*") and that the incorporation deed of the FT shall specify:

(1) the terms or the activity under which those receivables will be generated;
(2) the powers of the assignor over those receivables;
(3) the conditions of that assignment; and
(4) the risk allocation between the assignor and the assignee.

Regarding the distinction between future receivables arising prior to or after the seller's insolvency, please see questions 6.1 and 6.5 below.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

Spanish law provides that *in rem* security interests are ancillary to the main secured obligation and, hence, the transfer of the main secured obligation automatically entails the transfer of the security interests ancillary to it.

However, it is advisable for enforcement purposes to notarise the assignment so that the assignee may evidence, for enforcement purposes, that it benefits from the security (otherwise, the assignee may not have access to direct enforcement proceedings). If the security is a mortgage, a chattel mortgage or a chattel pledge, it is necessary, for the same enforcement purposes, to register the transfer in the Land Registry or the Moveable Assets Registry (as appropriate). Finally, real estate law provides that (unless otherwise agreed) the transfer of an obligation secured by a real estate mortgage should be notified to the obligor.

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor's set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor's set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

Spanish law allows an obligor to set-off against amounts it owes to a creditor if both the amounts owed by, and to, the creditor, are due and payable ("*deudas líquidas, vencidas y exigibles*"). Set-off occurs automatically and without the need of any notice by any of the parties to the other. If the requirements for setting off have been fulfilled before an obligor is served with the notice of an assignment, such obligor would be entitled to oppose to the purchaser any set-off already occurring before such notice. After the notice of assignment, an obligor would be entitled to oppose set-off against any amount it may owe to the purchaser. The above assumes that the assignment is not prohibited by the original contract. If the assignment is prohibited, an obligor (in addition to any claim that the obligor may have as a result of an assignment made in breach of the prohibition) may continue setting off against any amount owed to the original seller.

Regarding the last question, in case a receivables contract does not waive set-off rights, neither the seller nor the purchaser is liable to the obligor for damages caused by the termination of set-off rights.

4.14 Profit Extraction. What methods are typically used in your jurisdiction to extract residual profits from the purchaser?

Ordinary and special assignment. The assignment agreement may envisage that the purchaser shall transfer to the seller any residual profit (for example, any fee due by the obligor) with immediate effect.

FTs. In case the portfolio is assigned to an FT pursuant to Act 5/2015, since the fair value of the FT shall be zero, it is customary to envisage the payment to the seller of the residual profits on the last position of the cash flow waterfall. That is, once the claims of each and every creditor have been satisfied, the FT transfers to the seller the residual profits arising under the transaction. This amount is typically referred to as the intermediation margin ("*margen de intermediación*").

5 Security Issues

5.1 Back-up Security. Is it customary in your jurisdiction to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected (see question 4.9 above)?

This is not usual under Spanish practice.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your jurisdiction, and for such security interest to be perfected?

This is not applicable (please see the answer to question 5.1 above).

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in your jurisdiction to grant and perfect a security interest in purchased receivables governed by the laws of your jurisdiction and the related security?

Under Spanish law, receivables can be attached to three different types of security interests:

(i) **Possessory pledges**. Perfection of possessory pledges require that the pledgor "transfers the possession" of the receivable to the pledgee or to a third party (as appointed by pledgor and pledgee (e.g., a security agent)). Spanish law is not clear as to how this transfer of possession should be made in connection with a receivable, as Spanish general security interest regulations only foresee the transfer of tangible assets. As a matter of practice, it is generally accepted that the notarisation of the pledge, plus serving a notice of the creation of the pledge to the obligor, is sufficient to perfect a possessory pledge. When the parties prefer to avoid serving a notice to the obligors due to commercial reasons (e.g., due to confidentiality or reputational issues, etc.), alternative manners of transferring the possession of the receivable could be available.

(ii) **Non-possessory pledges**. Non-possessory pledges must be registered with the relevant Movable Assets Registry ("*Registro de Bienes Muebles*"). For these purposes, non-possessory pledges are signed in front of a Spanish Notary Public and are notarised in the form of a public document (as a matter of practice, in this case a notarial deed – "*póliza intervenida*").

(iii) **Financial collaterals** (subject to certain limitations). Certain types of receivables could be also attached to financial collateral (as provided by RDL 5/2005). RDL 5/2005 provides that financial collateral must be in written form and no additional formality should be required to perfect financial collaterals. RDL 5/2005 also provides that the delivery by a pledgor to the pledgee of a list of receivables in writing is sufficient to consider the receivables transferred to the pledgee. As a matter of practice, it is customary to perform the same perfection requirements explained for possessory pledges when creating a financial collateral (i.e., a notarial document and notice to the obligor).

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of your jurisdiction, and that security interest is valid and perfected under the laws of the purchaser's jurisdiction, will the security be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

A security interest validly created over a receivable and governed by a law other than Spanish law could be recognised as valid by a Spanish court on the basis of article 14.3 of the Rome I Regulation.

According to the Rome I Regulation, Spanish law would govern the assignability of the receivables, the relationship between the pledgee and the debtor of the receivable, the conditions under which the pledge can be invoked against the debtor, and the conditions under which the debtor's obligations could be discharged. This entails that it would be advisable to comply with the perfection requirements, in the same terms and in the same conditions as if it was a Spanish law-governed pledge. Therefore, it would be advisable to have the foreign law-governed pledge notarised in Spain, and the debtor notified of the creation of the pledge (please see the answer to question 5.3 above).

It remains unclear to what extent a pledge created over Spanish law governed receivables would be fully recognised *vis-à-vis* third creditors of the pledgor (for example, in the case of an insolvency proceeding) if the pledge is governed by a law different from Spanish law. Common opinion, however, suggests that if the Spanish perfection requirements have been met, a Spanish insolvency court may not reject the recognition of that pledge, even in the case of insolvency.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

Except for certain limited cases, no requirements in addition to those generally applicable to security over receivables apply in connection with the perfection of pledges over insurance policies, mortgage loans or consumer loans.

Security interests over promissory notes could require the endorsement by way of security over the same to perfect the security interest (if the promissory note has been issued in registered form), or the delivery of the same to the pledgee (if the promissory note has been issued in bearer form).

Security interests over marketable debt securities could require the following additional perfection requirements: (i) if the marketable debt securities are represented by book entries, the registration of the security interest in the relevant registry is required; (ii) if marketable debt securities have been issued in registered form, it is required that the pledgor endorses as security the relevant debt certificate; and (iii) if marketable debt securities have been issued in bearer form, the pledgor must deliver the relevant debt certificate to the pledgee.

5.6 Trusts. Does your jurisdiction recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets (so that they are not part of the seller's insolvency estate) until turned over to the purchaser?

Spanish law is not familiar with the concept of "trust", and it does not recognise the creation of a dual ownership (beneficial owner and legal owner). Therefore, trusts are not used in the Spanish practice. Although it would not have the same effects as a "trust", it is possible (and common in Spanish practice) to create a pledge in favour of the purchaser over the bank account(s) of the seller where the collections are credited. This pledge would confer upon the buyer a legal preference over the amount standing to the credit in such bank account in case of default or insolvency of the seller. This mechanism, however, may not be useful for collections received by the seller after a declaration of insolvency, as there are cases where insolvency courts have taken the view that a pledge over a bank account only attaches the balance standing to the credit in such bank account as of the date the insolvency is declared. Irrevocable instructions given by the seller to the obligors, or the account bank, may not survive the declaration of insolvency of the seller.

5.7 Bank Accounts. Does your jurisdiction recognise escrow accounts? Can security be taken over a bank account located in your jurisdiction? If so, what is the typical method? Would courts in your jurisdiction recognise a foreign law grant of security taken over a bank account located in your jurisdiction?

Escrow accounts are customary in Spanish practice. Security can be taken over a bank account located in Spain under Spanish law, in the form of a possessory pledge or, eventually, a financial collateral (please see the answer to question 5.3 above).

Although it is not usual in practice, a security interest validly created under a foreign law over a bank account located in Spain could be recognised by a Spanish court on the basis of article 14 of the Rome I Regulation. In that case, Spanish law would govern the assignability of the bank account receivables, the relationship between the pledgee and the account bank, the conditions under which the pledge can be invoked against the account bank, and the conditions under which the account bank's obligations could be discharged (see question 5.3 above).

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

Except as provided below, generally, no limitations apply. The pledgee would, upon enforcement of the pledge, be entitled to appropriate (or to set off, as applicable) the balance standing to the credit in the bank account from time to time.

The above assumes that the pledgor has not been declared insolvent. If the pledgor has been declared insolvent under a Spanish insolvency proceeding, the pledgee may not be entitled to funds flowing into the bank account after the declaration of insolvency. If the pledgor has been declared insolvent under a law different than Spain, the rules governing the main insolvency proceeding may also limit the legal rights of the pledgee.

Regarding security interests created over a bank account as a financial collateral, a judgment from the European Court of Justice ruled that in order to benefit from the privileged regime envisaged in the Financial Collateral Directive (Directive 2202/47/EC, transposed by RDL 5/2005 in Spain), funds under the bank account must not be available for the pledgor.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

Yes, the parties may agree that the owner of the account shall have access to the funds in the account prior to the enforcement. This would not affect the security. The parties would normally agree that a minimum balance should be left in the bank account at all times (e.g., 100 euros, or a similar amount), as some scholars have argued that a pledge over a bank account could be considered extinguished if the balance standing to the credit of such bank account is, or becomes, zero, or if the account is overdrawn.

It is also usual to agree in project finance facilities agreements restrictions on the use of the funds deposited into the account of the borrower(s) from time to time. These restrictions are contractual undertakings of the borrower(s), which would not be binding upon the account bank unless the account bank, the pledgor and the pledgee enter into a direct agreement. Finally, unlike other jurisdictions, it is not usual under Spanish law to vest the pledgee (nor the security agent) with signing rights over the account of the pledgor, as this could be considered by a court as evidence that the pledge is, or acts as, a *de facto* director of the owner of the account.

Notwithstanding the foregoing, as referred to in question 5.8 above, a judgment from the European Court of Justice ruled that in order to benefit from the privileged regime envisaged in the Financial Collateral Directive, the owner of the account must not have access to the funds.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will your jurisdiction's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? If so, what generally is the length of that stay of action? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

To the extent that the sale of receivables is a true sale and is otherwise perfected and executed before bankruptcy declaration, the purchaser would have a right to carve out the receivables from the estate. However, if seller acts as servicer, there is a risk of the proceeds being commingled with the estate. In order to mitigate that risk, proceeds should be registered in a pledged account (which would ensure that purchaser is a secured creditor with priority over those proceeds).

On the other hand, if the contract is executory for both parties at bankruptcy declaration, the debtor or the bankruptcy officer (depending on the degree of intervention) could reject the contract, in which case the purchaser would hold a damage claim, which would earn the treatment of administrative expenses (pre-deduction from the estate).

Subsequent purchase and sale contracts would be subject to the bankruptcy officer's authorisation (or direct consent, depending on the degree of intervention on the debtor's managing abilities). Court approval may be also required, insofar as the scope of the transaction exceeds the ordinary course of business.

Regarding security interests over receivables, the pledge shall vest the lender with secured treatment, so long as the receivables stem from a contract that has been perfected prior to bankruptcy declaration. The pledge shall not be effective, on the other hand, with respect to contracts entered into after bankruptcy declaration. Besides, if the receivables are deemed to be an asset needed for the ordinary course of business, the enforcement shall be stayed for one year, unless the debtor approves a plan of reorganisation or liquidation starts first. The only exception thereof is that the pledge is subject to special regime on financial collateral (in which case it is exempt from the application of the general insolvency provisions) or the receivables are deemed to be located in a foreign state (in which case foreign law may apply, unless it is an EU Member State, in which case the enforcement will escape the automatic stay).

6.2 Insolvency Official's Powers. If there is no stay of action, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of its ownership rights over the receivables (by means of injunction, stay order or other action)?

See question 6.1 above. Furthermore, the purchase and sale agreement of receivables could be subject to clawback (see question 6.3 below).

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the seller's insolvency proceedings? What are the lengths of the "suspect" or "preference" periods in your jurisdiction for (a) transactions between unrelated parties, and (b) transactions between related parties? If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period? If a parent company of the seller guarantee's the performance by the seller of its obligations under contracts with the purchaser, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period?

Under Spanish law, acts and transactions entered into within two years prior to bankruptcy declaration may be subject to clawback (and thus avoided), so long as:

(1) the debtor does not receive reasonably equivalent value in exchange at the time the transaction is perfected – or there is not a sound business reason for the detriment caused to the estate; or

(2) certain creditors are preferred to others when the company is already insolvent (i.e., unable to regularly pay its debts as they are due).

Hence, the Spanish Royal Legislative Decree 1/2020, dated 5 May 2020, approving the restated Spanish Insolvency Act (the "**Insolvency Act**"), does not distinguish between voidable preferences and fraudulent transfers. There is one action only, whereby the regime is the same for both purposes. The reach-back period is two years. The clawback action can only be filed once there is a bankruptcy proceeding in place.

The standing to bring a clawback action corresponds to the bankruptcy officer. Creditors (any creditor – no threshold is required) only have alternative standing if they prompt the filing of a clawback action and the bankruptcy officer does not bring it within two months. In such a case, creditors litigate on their own account. However, they may demand reimbursement of expenses up to the amount of the proceeds in case of success. This alternative standing does not apply to certain ring-fenced out-of-court workouts.

The Insolvency Act sets forth certain safe harbours, as well as rebuttable and non-rebuttable presumptions of acts and transactions that are preferential or detrimental to the estate (and hence avoidable).

Safe harbours are fundamentally: (i) acts and transactions done within the ordinary course of business according to standard conditions; and (ii) certain ring-fenced out-of-court workouts. In our experience, courts' construction of the ordinary course of business is restrictive.

Rebuttable presumptions (i.e., admitting evidence to the contrary, whose proof corresponds to the defendant) are: (i) onerous acts and transactions entered into with insiders (specially related persons or connected parties); (ii) the perfection of security interests in favour of antecedent debt (except for certain public claims); and (iii) early payment of secured claims with maturity subsequent to bankruptcy declaration.

Hence, whilst the length of the hardening period is the same, "related party transactions" are presumed to be detrimental to the estate.

If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, that renders sales by the seller to the purchaser "related party transactions", so long as the seller and purchaser belong to the same group of companies (i.e., the seller directly or indirectly owns more than 50% of the shares or has the ability to appoint the majority of directors).

If a parent company of the seller guarantees the performance by the seller of its obligations under contracts with the purchaser, that does not render sales by the seller to the purchaser "related party transactions".

However, the guarantee would be deemed a related party transaction for clawback purposes – it is deemed that the seller would not have been able to close the transaction had its parent company not guaranteed the transaction).

Non-rebuttable presumptions are (i) gifts and other acts or transactions without consideration, and (ii) early payment of unsecured claims with maturity subsequent to bankruptcy declaration.

Actual intent or fraud is not required to bring a clawback action successfully (except as to security interests subject to the special financial collateral regulation). The only requisite thereof is (i) lack of reasonably equivalent value or sound business reason when the transaction is perfected, or (ii) preferential payments when the company is already insolvent.

Yet in cases of actual fraud, the reach-back period to bring a fraudulent conveyance action is four years. Acts and transactions without consideration are presumed to be fraudulent. This action, which cannot be filed if there are other available recovery mechanisms, can be brought even if the insolvency proceeding has not been declared yet.

Causation-in-fact is also not required to successfully bring a clawback action. Likewise, preferential payments may be avoided even if the creditor demonstrates that the recovery does not exceed what it would obtain in liquidation. The link between the clawed-back act or transaction and the generation or aggravation or

insolvency may be significant though for classification purposes as per directors (e.g., potential liability for the impaired claims) or third parties (potential liability for aiding and abetting).

As per the outcome of a clawback action, the general rule (as per bilateral contracts with reciprocal obligations) is that the creditor obtains an administrative expense in exchange for the returning obligation, unless there is bad faith (i.e., actual or constructive knowledge that the act or transaction would be detrimental to the estate), in which case the claim is subordinated. If the creditor has transferred the collateral to a third party acting with good faith, there is an obligation to return the asset's value at the avoided transaction's time plus legal interests (and damages in case of bad faith).

Under European and Spanish insolvency conflicts of law rules, the Insolvency Act would apply to a clawback action filed by a company whose bankruptcy proceeding is declared in Spain (because of the location of its centre of main interests therein). However, creditors can object to the filing of the clawback action subject to Spanish law by showing that the act or transaction would not be avoidable under the applicable law. More precisely, creditors can challenge the filing of the clawback action in the answer, by demonstrating:

(1) that the act or transaction is subject to foreign law (i.e., non-Spanish); and
(2) that the act or transaction would be ring-fenced under such foreign law.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding? If the purchaser is owned by the seller or by an affiliate of the seller, does that affect the consolidation analysis?

In the case of debtors belonging to the same group of companies (which would be the case of the purchaser owned by the seller or by an affiliate controlled by the seller), Spanish law establishes (i) the possibility of filing a joint petition, and (ii) procedural coordination of the proceedings. Yet, the assets and claims of each company are not commingled with those of the remaining companies. Hence, the default rule is that there is no substantive consolidation. The proceeds of the assets of each company are only applied to settle such company's claims. Substantive consolidation may only take place when the estates are so blended that it is rendered unfeasible to carve out debtors' claims and estates, without incurring unjustifiable delay and cost.

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in your jurisdiction, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) on sales of receivables that only come into existence after the commencement of such proceedings?

With regard to (a), to the extent that the contract is executory for both parties, there is risk of rejection (see question 6.1 above).

With regard to (b), consent of the bankruptcy officer and, so long as the transaction exceeds the ordinary course of business, court approval, would be required.

6.6 Effect of Limited Recourse Provisions. If a debtor's contract contains a limited recourse provision (see question 7.4 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

We are not aware of case law tackling this issue, which would ultimately lie with insolvency definition (inability to regularly pay debts as they come due).

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in your jurisdiction establishing a legal framework for securitisation transactions? If so, what are the basics? Is there a regulatory authority responsible for regulating securitisation transactions in your jurisdiction? Does your jurisdiction define what type of transaction constitutes a securitisation?

The legal framework for a securitisation transaction set-up in Spain is set out in two different pieces or regulation:

(a) **The Securitisation Regulation**, applying to securitisations issuing securities on or after 1 January 2019, as developed by the relevant Commission delegated regulations and Commission implementing regulations. The Securitisation Regulation lays down a general framework:
- Due diligence obligation for institutional investors, as they must verify some aspects of the origination of the loans.
- Direct risk-retention rules applicable to the originator, sponsor or original lender, as referred to in question 8.6 below.
- Transparency obligations for originators, sponsors and original lenders, as they must make available to holders of a securitisation position, competent authorities and potential investors, a minimum list of information.
- Creation of a specific framework for simple, transparent and standardised securitisations ("**STS Securitisations**"), with a more risk-sensitive prudential framework, provided that the originator, the sponsors or the securitisation special purpose entity have notified the STS Securitisation designation to investors, competent authorities and to the European Securities and Markets Authority.
- Ban on re-securitisation, with certain exceptions.
- Credit-granting standards, as originators, sponsors and original lenders shall apply to exposures to be securitised the same sound and well-defined criteria for credit-granting that they apply to non-securitised exposures.
- Securitisation repository to be designated by each European Member State with supervisory, investigative and sanctioning powers. This repository will provide the investors with a single and supervised source of the data necessary for performing their due diligence.

(b) **Act 5/2015** sets out a legal regime for securitisation transactions in Spain. The Securitisation Regulation has had a material impact on Act 5/2015 since, in case a transaction meets the requirements of that act but does not observe the characteristics of a securitisation under the Securitisation Regulation, that transaction could not be considered, in principle, a "securitisation". In that particular case, the Securitisation Regulation as a whole would not apply, and that transaction would be governed exclusively by Act 5/2015.

- The scope of the Securitisation Regulation is narrower, and accordingly, a clarification is required regarding those structured funds that do not meet its requirements.
- Certain provisions of the Securitisation Regulation overlap or contradict with others of Act 5/2015.

So far, although the Ministry of Economy, in 2018, launched a consultation amongst the parties affected by the Securitisation Regulation to have their feedback, no draft bill in order to amend Act 5/2015 has been published yet.

Regardless of any forthcoming amendment of Act 5/2015, its current main aspects are described below:

1. **Vehicle**. The vehicles used in Spain are the FT, i.e., separate pools of assets lacking legal personality, whose fair value is zero. Managing companies of FTs, which shall act in the best interest of the FT's creditors and bondholders, subscribe on behalf of the FT any agreement to which the FT is a party, such as the servicing agreement on the underlying assets, or the loans and credit facilities agreements granted to the FT.
   In addition to the general case, the Spanish legislation also permits the incorporation of "private" funds, that is, FTs whose bonds will not be listed in the Spanish official secondary markets and whose holding will be restricted to qualified investors. In such cases, a prospectus will not be legally required (only the deed of incorporation of the FT).
2. **Assignment of receivables to an FT**. Please refer to questions 4.1, 4.2 and 4.11 above.
3. **Types of FT**:
   (i) Closed FTs, in which case the deed of incorporation will not envisage the inclusion of additional assets or liabilities after the creation of the FT. However, a four-month ramp-up period may be set during which additional assets and liabilities may be transferred to the FT up to a certain limit. Additionally, replacements may take place in certain cases (e.g., non-eligible assets).
   (ii) Open FTs, in which case the assets or liabilities of the FT, or both of them, may be modified (renewed) and/or extended after the incorporation of the FT. For instance, the FT may issue new securities, new credit facilities may be granted to the FT, or new assets may be assigned to the FT. In addition, the deed of incorporation and the relevant prospectus, when applicable, may envisage that the assets of the FT may be actively managed. That is, the terms in which those assets can be modified in order to maximise the profitability of the FT, safeguard the quality of its assets, perform a proper risk treatment or keep the initial conditions of the FT set out in the incorporation deed.
4. **Funding of FTs.** The liabilities side of the FT comprises:
(i) Fixed income securities. The incorporation deed of the FT sets out the terms of the issuance of the securitisation bonds ("*bonos de titulización*"), dividing them into different series with different levels of seniority. The securitisation bonds may be traded in an official secondary market (public FT) or in a multilateral trading facility (private FT).
   The incorporation deed of the FT normally sets out a pass-through model for the repayment of the securitisation bonds, i.e., the cash flow generated by the underlying assets repays according to the order of priority, simultaneously and by the same amount, the interests and principal that correspond to the bondholders.
(ii) Other liabilities, including loans and facilities granted by any third party (no legal restrictions on the characteristics of the FT's creditor).
   With respect to the interests of bondholders and creditors of the FT, unlike other jurisdictions, the Spanish legislation does not envisage the creation of a trust. Instead, Act 5/2015 sets out that the managing company shall act in the best interest of both bondholders and creditors, being accountable for its responsibilities (whether under the relevant contracts or legal duties) *vis-à-vis* them.
   In addition to this role of the managing company, the incorporation deed of the FT may envisage the creation of a creditors' meeting ("*junta de acreedores*"), setting out its powers and the terms under which it may operate. The creditors' meeting represents the interests of both bondholders and creditors, although the incorporation deed may set out different participation terms depending on the type of creditor or bondholder.
5. **Incorporation of an FT.** The incorporation of an FT is subject to the prior compliance of the following requirements:
   - Written authorisation request to the CNMV.
   - Approval and registration by the CNMV of a prospectus, not required in case of private funds, that is, in case the securitisation bonds are (i) exclusively addressed to qualified investors, and (ii) not intended to be listed in the Spanish official secondary markets.
   - An audit report on the securitised assets, issued either by the managing company or by an external audit. This requirement may be expressly exempted by the CNMV.
   - Approval and registration by the CNMV of (i) the draft of the incorporation deed, (ii) supporting documentation on the assets to be assigned to the FT, and (iii) any other supporting documentation required by the CNMV.

   The credit rating of the securitisation bonds is not a legal requirement for the incorporation of the FT.
6. **Managing company.** The managing company of an FT ("*Sociedad Gestora de Fondos de Titulización*") shall be a public limited company duly authorised by the CNMV, which is responsible for the incorporation, management and representation of the FT. On the other hand, the managing company acts on behalf of the FT and has the duty to safeguard the interests of the bondholders and the other creditors of the FT, as mentioned above. Managing companies are responsible for the management of the securitised portfolio of assets, although regarding PHs and/or CTHs, as referred to above in question 4.3 above, the responsibility for the management of the underlying assets remains in the issuer of the PH/CTH.
7. **Compartments.** Independent compartments may be created within the same, with its own issuance of bonds and its own independent obligations, FT. Additionally, the incorporation deed may envisage the separate liquidation of each of those compartments.
8. **Regulatory authority.** As referred to in sections 4 ("Incorporation of an FT") and 5 ("Managing company") above, FTs need the prior authorisation of and registration with the CNMV in Spain, and managing companies require the prior authorisation of the CNMV.

7.2 Securitisation Entities. Does your jurisdiction have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

On the requirements for establishment and management of such entities, please see question 7.1 above.

FTs are subject to a privileged regime in terms of:

- Tax, e.g., with lower corporate income tax or with the exemption from stamp duty tax on the incorporation of the FT.
- Insolvency, as insolvency authorities would have to prove fraud in order to challenge the transfer of the credit rights.

Since FTs are not legal entities, they do not have any directors or shareholders, so no specific requirements apply in this regard. However, companies managing those FTs are regulated entities, subject to the CNMV's surveillance. In order to grant the relevant authorisation to a managing company, the CNMV examines the suitability of the directors and significant shareholders, i.e., those holding at least 10% of the share capital of the company or voting rights.

7.3 Location and form of Securitisation Entities. Is it typical to establish the special purpose entity in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the special purpose entity in your jurisdiction? If offshore, where are special purpose entities typically located for securitisations in your jurisdiction? What are the forms that the special purpose entity would normally take in your jurisdiction and how would such entity usually be owned?

In case the portfolio has a financial nature (especially in case of mortgage loans), it is customary to establish an SPV in Spain by means of the incorporation of an FT. As referred to in questions 4.1 and 7.2 above, assignments to these special purpose vehicles are subject to a special tax and insolvency regime.

Additionally, as mentioned in question 4.3 above, when a credit institution sells mortgage loans and certain requirements under Act 2/1981 and RD 716/2009 are met, credit rights under that portfolio may be transferred by the issuance and subscription of PH and CTH, in which case the regime described in question 4.3 applies.

7.4 Limited-Recourse Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished?

Yes; in principle, a court in Spain would give effect to that contractual provision.

7.5 Non-Petition Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

Spanish law contemplates the waiving of rights, to the extent that it is not detriment to a third party or contrary to public order. Having said that, the waiver of the right to seek insolvency relief or the right to take any legal action against the purchaser is unlikely to be upheld by a court (particularly in the context of an insolvent seller), notwithstanding any remedy (damages) corresponding to the non-breaching party.

7.6 Priority of Payments "Waterfall". Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

In principle, a court in Spain would give effect to a contractual provision on payment waterfall, if that provision does not conflict with compulsory rules.

The Insolvency Act does not recognise subordination agreements unless *vis-à-vis* all creditors of the debtor. As such, the most likely outcome in a bankruptcy proceeding is that the officer and the court distribute the proceeds pursuant to compulsory priority rules, notwithstanding the enforceability of the subordination agreement as a turn-over provision in a separate proceeding.

7.7 Independent Director. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

The Insolvency Act sets forth the duty to file for bankruptcy within two months as from the debtor's insolvency situation (inability to regularly pay debts as they are due), with the exception of the so-called "5 *bis*" notice, which provides an extra four-month period to negotiate with creditors out of court. Otherwise, directors may be held liable for the accrued claims as from the onset of insolvency that turn out to be impaired if the company is liquidated, or the late petition is found to be the cause for that impairment.

If, however, the articles of incorporation do require a majority of directors to petition for bankruptcy (for instance, three joint directors), there is case law on the dismissal of bankruptcy petitions if the internal corporate resolution is not valid (only two out of three joint directors adopt the decision).

In practice, the most efficient way to avoid a bankruptcy petition is the enforcement of step-in rights, which vest lenders with voting rights to change directors. This must be included in the articles of incorporation in order to be enforceable against third parties.

7.8 Location of Purchaser. Is it typical to establish the purchaser in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the purchaser in your jurisdiction? If offshore, where are purchasers typically located for securitisations in your jurisdiction?

Commercial receivables. In case of commercial receivables or non-performing loans, it is customary that the purchaser is established in an EU Member State, such as Luxembourg, Netherlands or Ireland, for operational, commercial, tax, regulatory and other business reasons.

Financial assets. Please refer to the answer in question 7.3 above.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in your jurisdiction, will its purchase and ownership or its collection and enforcement of receivables result in its being required

to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in your jurisdiction? Does the answer to the preceding question change if the purchaser does business with more than one seller in your jurisdiction?

As referred to above in the preceding section, securitisation funds incorporated in Spain (FTs) and their managing companies are subject to the Spanish capital markets regulation, to the prior administrative authorisation of the CNMV and to surveillance of the mentioned supervisor.

Aside from these two entities, whose special regime has been analysed in the preceding section, in general, the mere purchase and management of portfolios of receivables regardless of whether the purchaser does business with other sellers in Spain does not require a prior licence as such in Spain, but the completion of a registration requirement in certain circumstances.

In particular, in case of the mortgage loans granted to (or guaranteed by) individuals, as referred to in question 1.2 above, Act 5/2019 sets out that the granting and the servicing of those loans require the prior registration in the relevant registry (the Bank of Spain or the relevant regional consumer authority, depending on the geographical scope of the services provided) except when the entity granting or servicing such loans is already incorporated as a credit institution or as a specialised credit entity ("*establecimiento financiero de crédito*").

In case of mortgage loans not covered by Act 5/2019 but within the scope of Act 2/2009, of 31 March, on mortgage loans and mortgage credits granted to consumers and on intermediary services regarding loans and credits ("**Act 2/2009**"), although its article 1 sets out that it shall apply to professionals "granting" such mortgage loans and credits (which, strictly speaking, would not be the case), in case the purchaser of a mortgage loan portfolio subrogates itself into the lender's position, there is a risk that Spanish consumer authorities and/or Spanish courts consider that Act 2/2009 should apply likewise. If that was the case, this would involve, essentially: (i) the mandatory registration, which should be prior to the purchase of the relevant portfolio, of the purchaser of the loans within the special registry; and (ii) the need to comply with certain consumer regulations, which basically relate to the information obligations to be fulfilled at the time of granting the loan or credit.

In any case, it should be noted that neither the application of Act 2/2009 nor Act 5/2019 involve being subject to the prudential regulation applicable to financial institutions in Spain.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third-party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

Any third party performing collection tasks regarding the assigned portfolio of receivables is not subject to any prior licence in order to collect those receivables but to the registration requirement referred in question 8.1 above in case Act 5/2019 applies.

Additionally, a prior licence will be required when the administration activities are, because of their nature, subject to that prior requirement. For example, in the case of collection of receivables under a portfolio of mortgage loans, when the administration activities necessarily involve holding the obligors' bank accounts, the servicing activity will be indirectly subject to prior authorisation since the gathering of reimbursable funds from the public is an activity reserved to financial institutions. Likewise, in case the collection of receivables involves providing payment services, the servicing activity will be indirectly subject to prior authorisation since the provision of payment services is an activity reserved to certain financial entities (mainly, credit institutions, electronic money institutions and payment institutions).

On the enforceability of such receivables, in order to appear in court on behalf of the assignee:

- In case of a third-party replacement, the third party will need the relevant power of attorney granted by the purchaser in order to appear in court on behalf of the purchaser.
- In case that, despite serving notification of the assignment to the obligor, the seller remains responsible for the collection tasks, in order to appear in court on behalf of the purchaser, the seller will need a power of attorney granted by the purchaser.

In addition to the foregoing and regardless of who is performing the servicing activities, in order to appear in court, the assistance of a court agent ("*procurador*") is required in Spain.

8.3 Data Protection. Does your jurisdiction have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

Yes. The GDPR and the SDPA set out restrictions on the processing and transfer of personal data. For these purposes, personal data is any information relating to an identified or identifiable natural person (the data subject), therefore affecting obligors who are individuals (consumer obligors and sole traders).

In general, data subjects' consent is required to process their data, although there are exceptions to this rule, such as when the personal data refers to the parties of an administrative, employment or business relationship contract or pre-contract, and it is necessary for its maintenance of fulfilment. Consent must be informed and express.

In order to transfer personal data to a third party, the data controller (i.e., any natural or legal person, whether public or private, or administrative body that makes decisions on the purposes, content and use of personal data processing) must have previously informed the data subject of the transfer about a number of issues (as indicated previously in response to question 4.5 above). In addition, the data controller must obtain the data subject's consent, unless an exception provided by law applies; for example:

(i) when the transfer is authorised by law;
(ii) when the transfer results from the free and legitimate acceptance of a legal relationship whose development, fulfilment and control implies such transfer; and
(iii) when the transfer satisfies a legitimate interest of the controller or the party to whom the personal data is transferred, provided that such interest is not overridden by the data subject's interests or fundamental rights and freedoms.

The requirements above do not apply when the data recipient acts as the data processor, processing the personal data exclusively on behalf of the data controller and under its instructions to render a service to the data controller. In this case, the data processing must be regulated in a contract specifying the conditions established under article 28 GDPR and article 32 SDPA.

Additionally, when the data is transferred to a country whose level of protection has not been declared adequate by the European Commission (any country outside the European Economic Area, with some exceptions), the international transfer is subjected to the requirements established in Chapter V GDPR.

In this regard, it should be ensured that sufficient guarantees of protection are in place, which may be summarised as follows:

(i) Firstly, to check whether the third country to which the data are to be transferred has an adequacy decision from the European Commission. If so, the transfer can be carried out without further requirements.

(ii) In the absence of an adequacy decision, under article 46 GDPR the data controller should execute the Commission's Standard Contractual Clauses with the transferee of the data, or rely on any of the other exemptions set forth in GDPR (e.g., implementing binding corporate rules, which have to be approved by the lead supervisory authority).

(iii) Finally, in the absence of the above-mentioned options, the lead supervisory authority, in Spain, the "*Agencia Española de Protección de Datos*", must be notified in order for it to grant an express authorisation to carry out the transfer of personal data to a third country.

In addition to the above, according to the rulings "Schrems I" and "Schrems II" of the Court of Justice of the European Union, every personal data transfer mechanism must be adapted to (i) the Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data, and (ii) the Recommendations 02/2020 on the European Essential Guarantees for surveillance measures, adopted by the European Data Protection Board on 10 November 2020 with the particular aim of increasing safeguards for the transfer of data to third countries.

Although these rules only apply to individuals' personal data, other regulations (e.g., on banking secrecy) may also impose restrictions on the use and dissemination of sole traders' and enterprises' data.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your jurisdiction? Briefly, what is required?

(1) National regulation on consumer loans. In case the lender under a consumer loan agreement assigns the credit rights thereunder, according to Act 16/2011, the borrower (consumer) shall be entitled to raise before the assignee the same defences that would have corresponded to that obligor *vis-à-vis* the original lender, including set-off, in case those credit rights had not been assigned.

(2) National regulation on mortgage loans. Please refer to question 8.1 above.

(3) Regional regulation on consumer protection. Some regional acts impose a notification obligation to the debtor regarding the assignment of the mortgage loan, so that the assignee of the credit right then has *locus standi* in a foreclosure scenario. Notwithstanding the foregoing, and in relation to questions 4.2 and 4.3 above on the requirements for the validity of this assignment, these consumer protection rules do not challenge the validity of the assignment.

8.5 Currency Restrictions. Does your jurisdiction have laws restricting the exchange of your jurisdiction's currency for other currencies or the making of payments in your jurisdiction's currency to persons outside the country?

Subject to currency transfer and dealing restrictions applicable under current UN sanctions, EU sanctions and US sanctions, and to compliance with anti-money laundering/anti-terrorism legislation, there are no restrictions on the exchange of the euro for other currencies or the making of payments in euros to persons outside of Spain.

8.6 Risk Retention. Does your jurisdiction have laws or regulations relating to "risk retention"? How are securitisation transactions in your jurisdiction usually structured to satisfy those risk retention requirements?

Yes, Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June, 2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ("**Regulation 575/2013**"), amended pursuant to Regulation (EU) No 2017/2401 of the European Parliament and of the Council, of 12 December, 2017, amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (hereinafter, the "**CRR Amendment Regulation**"), with a hierarchy of three different calculation methods and specific rules on prudential treatment for credit institutions investing in STS securitisations.

Amongst those requirements, there is a rule on the retained interest of the issuer. In this regard, an institution, other than when acting as an originator, a sponsor or original lender, shall be exposed to the credit risk of a securitisation position in its trading book or non-trading book only if the originator, sponsor or original lender has explicitly disclosed to the institution that it will retain, on an ongoing basis, a material net economic interest which, in any event, shall not be less than 5%.

The net economic interest is measured at origination and shall be maintained on an ongoing basis, and shall be determined by the notional value for off-balance sheet items. The net economic interest, including retained positions, interest or exposures, shall not be subject to any credit risk mitigation or any short positions or any other hedge and shall not be sold.

8.7 Regulatory Developments. Have there been any regulatory developments in your jurisdiction which are likely to have a material impact on securitisation transactions in your jurisdiction?

One of the most important regulatory developments expected is the further amendment of Act 5/2015, in order to align the Act with the Securitisation Regulation, as explained in question 7.1 above.

Additionally, in the context of the COVID-19 outbreak, certain measures have been adopted by the Spanish government in order to mitigate the economic impact of the situation, amongst others:

- Suspension of insolvency proceedings. Insolvent debtors' obligation to file for insolvency has been suspended until 31 December 2021, according to Royal Decree-Law 5/2021. To foster voluntary insolvency proceedings, the courts will not process the mandatory applications for insolvency until this date, and if the applications for voluntary insolvency proceedings were submitted before this date, they will be prioritised.
- Moratoriums foreseen in Royal Decree-Law 11/2020 (as amended or complemented by, among others, Royal Decree-Law 26/2020 and Royal Decree-Law 3/2021). Persons that provide evidence of circumstances of economic vulnerability may accede to: (i) a temporary suspension of the contractual obligations under the relevant loan or credit (i.e., while the moratorium is in force, no principal or interests may be paid under the relevant loan or credit and no interests – either ordinary or default

interests – shall be accrued); (ii) an extension of the final maturity of these loans or credits equivalent to the duration of the moratorium; and (iii) personal guarantors in circumstances of economic vulnerability due to the COVID-19 crisis can benefit from the moratorium, being entitled to request lenders to pursue and exhaust the main debtors' assets before claiming the secured debt from them. Royal Decree-Law 3/2021 established that the deadline for submissions of requests for these moratoriums is 30 March 2021. However, such deadline may be extended, or similar regulation may be approved in the course of 2021.

Finally, in terms of soft law, non-legislative moratoriums have been implemented by many credit institutions in Spain, who have adhered to agreements sponsored by industry-wide associations. Those agreements set out more flexible requirements for those loans and borrowers to qualify for a moratorium.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in your jurisdiction? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest? If withholding taxes might apply, what are the typical methods for eliminating or reducing withholding taxes?

Whether any part of the payments on receivables made to the purchaser by Spanish obligors would be subject to withholding taxes in Spain depends on: (i) the characterisation, for tax purposes, of the income received by the purchaser; and (ii) the jurisdiction where the purchaser resides for tax purposes.

Although the characterisation of the income obtained by the non-Spanish tax resident purchaser is not clearly defined, in our opinion it would be deemed to be either (a) interest income, or (b) capital gains.

According to the Spanish Non-Resident Income Tax Act, regardless of whether the referred income is characterised as interest or capital gains, such income would be tax-exempt in Spain to the extent the purchaser: (i) is resident for tax purposes in an EU Member State or in a State within the European Economic Area, other than a tax haven territory, provided that is also the "beneficial owner" of such income (recent ECJ decisions of February 26, 2019, on the so-called "Danish cases" (C-115/16, C-118/16, C-119/16 and C-299/16) may have an impact on the interpretation of the concept "beneficial ownership" by Spanish Tax Authorities); and (ii) does not act, in regards to the purchase of the receivables, through a permanent establishment located in Spain or outside the EU or the European Economic Area.

Residence for tax purposes in an EU Member State or in a State within the European Economic Area must be accredited through a certificate of tax residency issued by the relevant tax authorities. Tax residency certificates are valid for a one-year period.

In case the purchaser is resident for tax purposes in a State that is not an EU Member State and neither a State within the European Economic Area, it may be subject to withholding tax in Spain in accordance with the provisions set forth in the relevant convention for the avoidance of double taxation.

Residency in a particular jurisdiction for the purposes of the application of a reduced or a nil withholding tax in accordance with a specific convention must be accredited through a certificate of tax residency, issued by the relevant tax authorities. These certificates are valid for a one-year period.

In case the purchaser can neither accredit to be tax resident in an EU Member State, nor in a State within the European Economic Area, nor in a jurisdiction with which Spain has a convention for the avoidance of double taxation in force, the purchaser would be subject to tax on the income derived from the transaction at the general current tax rate of 19%.

Whether any part of the payments made by the obligor to the seller is subject to withholding tax in Spain depends, in case the seller is a Spanish company or a permanent establishment located in Spain of a foreign entity, on the nature of such payments. In principle, payments made in remuneration of a delivery of goods or of the rendering of services are not subject to withholding tax in Spain. However, interest paid as remuneration of the deferral on the payment of a commercial transaction would be subject to withholding tax in Spain at the general tax rate of 19%.

Withholding taxes cannot be eliminated or reduced other than through the domestic law exemption or the relevant convention for the avoidance of double taxation – and provided that the purchaser is entitled to benefit from any of them.

9.2 Seller Tax Accounting. Does your jurisdiction require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

The seller would be subject to the provisions set forth in the Spanish General Accounting Plan and the General Accepted Accounting Principles ("**GAAP**") with regard to (i) the initial recognition of a credit against the obligor, and (ii) the recognition of the transfer of such credit to the purchaser. Note that the Spanish General Accounting Plan regulation is aligned, in general terms, with the provisions set forth in the International Financial Reporting Standards ("**IFRS**").

Generally, the seller would recognise, for accounting purposes, the transfer of the receivable at the time of the transfer of the risks and benefits inherent to the creditor position against the obligor.

Spanish tax legislation does not establish any speciality in this regard; rather it follows the regulations foreseen under the Spanish General Accounting Plan and the GAAP.

9.3 Stamp Duty, etc. Does your jurisdiction impose stamp duty or other transfer or documentary taxes on sales of receivables?

According to the Spanish tax legislation, the issuance of bills of exchange (*letras de cambio*) and documents issued with the purpose of transferring funds (*título valor, documento cambiario or documentos que realicen la función de giro*) are subject to stamp duty. Promissory notes (*pagarés*) and any other analogous instruments issued in series with a maturity shorter than 18 months are subject to stamp duty but exempt.

The tax due depends on (i) the total amount represented on such document, and (ii) the maturity. The taxpayer would be the issuer of these instruments or, in case such instruments are issued abroad, the first holder in the Spanish territory of such instruments.

In addition, anyone intervening in the negotiation or collection of these instruments would be jointly and severally liable for the payment of the tax due and not duly paid by the issuer.

Transfer Tax would not apply to the extent the seller is a VAT taxpayer and the transfer of the receivables is subject to VAT.

9.4 Value Added Taxes. Does your jurisdiction impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

Under Spanish Value-Added Tax legislation, the transfer of receivables would be a supply of services for VAT purposes and therefore, it would be deemed to be located in the place where the recipient of the services is established for VAT purposes. Therefore, as long as the recipient of the services (i) is not established for VAT purposes within Spanish VAT territory, and (ii) does not have a permanent establishment within the Spanish VAT territory to which the service is supplied, the transfer would not be subject to VAT in Spain. If such transfer is located in Spain for VAT purposes, the transfer would be VAT-exempt.

Note that the services rendered by the seller to the purchaser, consisting of the collection of the payments on receivables made by the obligors, would represent an independent transaction to the transfer of the creditor position and/or to the transfer of any documents issued with the purpose of transferring funds.

According to the Spanish general VAT location rules, those collection services would be deemed to be located in the jurisdiction where the purchaser is established for VAT purposes. Therefore, to the extent that the purchaser: (i) is not established, for VAT purposes, within the Spanish VAT territory; and (ii) does not have a permanent establishment within the Spanish VAT territory to which the service is supplied, collection services would not be subject to VAT in Spain.

9.5 Purchaser Liability. If the seller is required to pay value-added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

Under the Spanish General Taxation Act, any entity or individual causing or actively collaborating with any tax infringement would be jointly and severally liable for the payment of any tax debts derived from the transactions.

Likewise, any entity or individual causing or collaborating on the occultation or transfer of assets and rights belonging to the tax debtor would also be jointly and severally liable for the payment of the tax debts of such debtor.

Entities or individuals not attending attachment orders issued over assets or rights, issued by the Spanish Tax Authorities, would also be jointly and severally liable for the payment of the unpaid tax debts as a consequence of such inattention. This may be the case if the purchaser receives communication from the Spanish Tax Authorities informing that any payments to the seller must be made, instead, to the tax authorities for the payment of unpaid tax debts of the seller and the purchaser neglects the order.

In addition to the above, Spanish Value-Added Tax legislation regulates specific scenarios of tax responsibility.

In particular, the recipient of a supply of goods and/or services would be jointly and severally liable for the payment of VAT chargeable in the transaction if, as a result of a wilful or negligent act or omission, the correct application of the tax is prevented.

Furthermore, a recipient of a supply of goods and/or services acting as an entrepreneur or professional for the purposes of such supply would be liable for the payment of the VAT chargeable in a transaction, if such recipient should have reasonably presumed that the supplier was not going to pay the VAT to the Spanish Tax Authorities. Spanish Value-Added Tax legislation considers that a recipient should reasonably presume that the VAT charged in a supply of goods or services is not going to be paid to the relevant tax authorities if the price paid is notoriously below what could be considered a normal price.

Note that, in principle, the above-mentioned VAT responsibility would not be applicable on the proposed transaction to the extent the purchase of receivables would be VAT-exempt and the collection services would not be located within the Spanish VAT territory in the terms described in question 9.4 above.

In relation to stamp duty, as previously mentioned, anyone intervening in the negotiation or collection of these instruments would be jointly and severally liable for the payment of the tax due and not duly paid by the issuer.

9.6 Doing Business. Assuming that the purchaser conducts no other business in your jurisdiction, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in your jurisdiction?

In general terms, a non-Spanish tax resident would be deemed to have a permanent establishment in Spain if such non-Spanish resident carries on a business activity in Spain through a fixed place of business (a branch, offices, installations, etc.) or if it acts in Spain through a dependent agent who has, and habitually exercises, powers to enter into agreements with third parties on its behalf.

Note that the appointment of the seller as the collection agent of the purchaser would require the granting of certain powers to the seller for the purposes of rendering such collection services.

Although a case-by-case analysis is required, in principle, the empowerment to the seller for the purposes of acting as a mere collection agent should not imply that such seller acts as a dependent agent of the purchaser. Therefore, in principle, the seller, acting as a collection agent of the purchaser, would not be deemed to constitute a permanent establishment of the purchaser in Spain.

In any case, in order to ensure that the seller is not deemed to be a Spanish dependent agent of the purchaser, special attention must be paid to the content and nature of the authorities granted to the seller in the particular power of attorney. Only administrative faculties related to the mere cash collection of the receivables and not others related to the core business of the purchaser should be granted to the seller.

9.7 Taxable Income. If a purchaser located in your jurisdiction receives debt relief as the result of a limited recourse clause (see question 7.4 above), is that debt relief liable to tax in your jurisdiction?

Debt relief to a Spanish tax resident purchaser may trigger taxable income in Spain to that purchaser. However, if the debt forgiveness is granted by an affiliate (100%) to the purchaser, it may be treated as an equity contribution.

Héctor Bros is a partner at Cuatrecasas, with broad experience in banking and finance. He has provided advice on multiple corporate and project financing transactions, asset financing, complex and innovative public-private partnership ("**PPP**") and private finance initiative ("**PFI**") structures for transportation and social infrastructure (prisons, hospitals, public buildings), other forms of structured finance, and cross-border acquisition finance. He regularly assists a number of national and international banks and is a leading reference for top sponsors operating in the Iberian market.
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