

Bills Committee on Companies (Amendment) Bill 2004

E-mail dated 30 May 2005 from The Hong Kong Mortgage Corporation Limited

Dear Connie

Re: Companies (Amendment) Bill 2004

We refer to your email dated 30 May 2005, which we received around 4:45 pm, attaching copies of recent submissions from the Administration and the Hong Kong Institute of Certified Public Accountants (HKICPA). In the shortness of time, we are unable to make a full response to all the points raised. Nevertheless, the arguments have already been well rehearsed before and the question is whether there are underlying facts to substantiate the case. From the latest correspondence, we are of the view that certain factual issues raised by the Government and the HKICPA need further clarification. Adopting the same references used in the submissions, we briefly set out our comments below.

Submission by Administration

(C) Australia

We have previously advised ((LC Paper No. CB(1)692/04-05(01)) that despite the adoption of IAS 27 and SIC-12 in Australia several years ago, accounting firms had taken a liberal approach to their application to securitisation transactions and, accordingly, were still able to render off-balance sheet opinions to securitisation SPEs until the general adoption of IAS on 1 January 2005. The Administration has ignored the actual Australian practice prevailing up to now and has sought to rely on the growth in the Australian securitisation market as evidence that the removal of off-balance sheet treatment has had no effect. The truth is that the effect has yet to be felt, and growing concern over this effect has led to the establishment of the global project mentioned in (F) below.

(D) Singapore

We have been advised by Singapore legal practitioners that after the introduction of IAS 27 and SIC-12 in Singapore several years ago, local accounting firms became reluctant to accord off-balance sheet treatment to transaction structures previously used for property developer-related securitisations. This has led to a drying up of securitization transactions from about six per year previously to only one so far this year.

(E) The US and Japan

The Administration notes that under the US's accounting standard FAS 140, "qualifying special purpose entities" must meet very restrictive criteria before qualifying for off-balance sheet treatment, which means that off-balance sheet treatment would not be available to companies not engaging in securitisation transactions.

This is exactly our point. Any carve out from the amendments should be applied only to genuine securitisation transactions which can satisfy certain predefined criteria. These should be drafted in such a way as to prevent casual use of the carve out.

(F) The Various Securitisation Forums in Australia, US and Europe

We have previously reported to the Bills Committee (LC Paper No. CB(1)692/04-05(01)), that the American Securitization Forum, Bond Market Association, European Securitisation Forum and Australian Securitisation Forum have together set up a joint working group to develop a global accounting framework for securitisation transactions. This working group is entitled the "Global Securitization Accounting Convergence Committee" (GSACC).

The Administration has in its latest submission (LC Paper No. CB(1)1655/05-05(02)) disputed the existence of this Committee (paragraph 13).

The GSACC has recently started a survey to ascertain the views of their constituent members on certain accounting standards in each jurisdiction with the aim of developing a common preferred approach to global accounting. It is confirmed that both the IASB and FASB are aware of the GSACC and its goals and are interested in maintaining a dialogue with them as the global accounting convergence initiative moves forward.

We enclose a copy of the survey and accompanying cover letter which will helpfully demonstrate to the Bills Committee members that the accounting standards relating to securitisation transactions are still being debated and liable to future amendment, notwithstanding the assertions of the Administration that they have been finally and definitively settled. In view of these developments, we reiterate our submission that the application of a carve out for genuine securitisation transactions should be in order.

Submission by Hong Kong Institute of Certified Public Accountants dated 30 May 2005

We find the position of the HKICPA on linked presentation difficult to follow and are perplexed by their argument that the UK situation is unique and therefore should not be followed. Hong Kong's accounting systems have very strong connections with

the UK's systems, even after 1997. Accordingly, we do not see why it is such a problem for Hong Kong to follow the current practice in the UK, which is after all the provenance of Hong Kong's accounting principles.

Finally, we would like to advise members that Ms. Ann Rutledge, a former senior securitisation analyst with Moody's Investors Services Inc., who has previously submitted a paper to the Bills Committee on the amendments (LC Paper No. CB(1)938/04-05(08)), will be in Hong Kong during the last week of May and first week of June. Ms. Rutledge may be available to brief members on the US and Asian perspectives further if required.

We should be grateful if you would kindly put these additional materials before members to supplement the information they already have on these issues.

Kind regards.

Susie Cheung
General Counsel and Company Secretary
The Hong Kong Mortgage Corporation Limited
(Tel: (852) 2536 0032)
(Fax: (852) 2536 0094)



May 16, 2005

Dear ASF/TBMA Member:

Re: The Global Securitisation Accounting Survey

As you may be aware, the American Securitization Forum and the Bond Market Association have, together with the European Securitisation Forum and the Australian Securitisation Forum, set up a joint working group entitled the "Global Securitization Accounting Convergence Committee," or GSACC for short.

The objective of the GSACC is to work with its constituent members to understand their current views on certain accounting standards in each jurisdiction and to explore areas of common ground with a view to establishing a preferred global accounting framework for all securitization transactions. This is undoubtedly an extremely ambitious goal, but one that we believe is worth pursuing. We believe that if we are able to develop a common preferred approach to securitization accounting going forward, this will strengthen our position and influence with the major accounting standard setting bodies. In fact, both IASB and FASB are aware of the GSACC and its goals, and their members and staffs are interested in maintaining a dialogue with us as their global accounting convergence initiative moves forward.

The GSACC has four co-chairs, each representing one of the constituent organizations. Details are included in the attached appendix. We have also engaged Deloitte & Touche LLP to work with us on this project. Again, the relevant contact details are included in the attached appendix.

At the last GSACC meeting it was agreed that to move the project forward, it would be helpful to gain a better understanding of members' views on securitization accounting. We have therefore prepared the attached survey, which is divided into four areas:

- A. Some brief background on your firm to provide the context for the answers that follow.
- B. Your views on the importance of accounting to securitization transactions.
- C. Your views on current accounting standards.
- D. Your views on the way forward.

Please complete the survey to the best of your ability. If there are some questions that you cannot answer in part or in full, please leave these blank and complete other

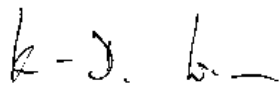
sections of the survey. Individual responses will be maintained in strict confidence; only aggregate responses will be shared with the full GSACC, and potentially with accounting standards setting bodies.

We very much appreciate your time and effort in completing this survey. Although the survey is several pages in length, it should not require an inordinate amount of time or effort to complete. If you have any questions in connection with the survey, please do not hesitate to contact one of the co-chairs or one of the identified individuals from Deloitte. **We strongly encourage responding firms—especially those that are members of each association and that are active throughout the global securitization markets—to coordinate internally with your colleagues, with a view toward preparing and submitting a single, integrated response from your organization.**

When you have completed the survey please return it via e-mail or facsimile to the staff member at the relevant securitization forum (details are included in the appendix). Please try to complete the survey as soon as possible and in any event not later than June 10, 2005.

Thank you for your assistance.

Best Regards,



Klaus-Dieter Findeisen
ESF Co-Chair, Global Securitisation
Accounting Convergence Committee
(KPMG)



Matthew Schroeder
ASF Co-Chair, Global Securitisation
Accounting Convergence Committee
(Goldman Sachs)



Michael Codling
Australian SF Co-Chair, Global Securitisation
Accounting Convergence Committee
(PricewaterhouseCoopers)



Staci Lublin
TBMA Co-Chair, Global Securitisation
Accounting Convergence Committee
(Morgan Stanley)



**Global Securitisation Accounting Convergence Committee
Survey of Views on Securitisation Accounting Frameworks**

This survey is divided into four areas:

- A. Some brief background on your firm to provide the context for the answers that follow.
- B. Your views on the importance of accounting to securitisation transactions.
- C. Your views on current accounting standards.
- D. Your views on the way forward.

Please complete the survey to the best of your ability. If there are some questions that you cannot answer in part or in full, please leave these blank and complete other sections of the survey. Individual responses will be maintained in confidence; only aggregate responses will be shared with the full Committee, and potentially with accounting standards setting bodies.

Section A: Background on your firm

1. **a) In what capacity does your firm act (Check all that apply):** **b) In what region(s) does your firm conduct its securitisation business?**

- | | |
|---|---|
| <input type="checkbox"/> Originator | <input type="checkbox"/> U.S. |
| <input type="checkbox"/> Arranger/underwriter | <input type="checkbox"/> Europe |
| <input type="checkbox"/> Investor | <input type="checkbox"/> Australia |
| <input type="checkbox"/> Other (please specify) | <input type="checkbox"/> Japan |
| _____ | <input type="checkbox"/> Asia/Pacific (other than |
| _____ | Australia and Japan) |
| _____ | <input type="checkbox"/> Other (please specify) |
| | _____ |

2. **What is the approximate aggregate volume of assets that your firm securitised as an originator or transferor in 2004, accounted for both on and off balance sheet? (Please clearly specify currency):**

3. To what extent is your firm involved in securitisations involving the following asset types?

(Please respond on a 1 – 5 scale for each asset type listed below)

<u>Asset Type</u>	Not at all Very much so				
	1	2	3	4	5
RMBS					
CMBS					
Mortgage-Related ABS (e.g., home equity loan ABS)					
Non-Mortgage ABS (e.g., auto, credit card, student loan ABS)					
Trade receivables ABS					
CDOs/CLOs etc.					
Synthetic Structures (e.g., credit-linked notes, repackaging transactions)					
Other asset/transaction types (Please List):					
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Section B - The Importance of Accounting to Securitisation Transactions

4. **Securitisation has a key impact on (Please mark the box that best describes your view in response to each of the following):**

	Not at all			Very much so	
	1	2	3	4	5
Profitability (e.g. financial reporting, net income and EPS)					
Performance Efficiency (e.g. ROA, ROE, ROI)					
Liquidity					
Leverage					
Regulatory capital requirements					
Taxation (e.g. taxable income or taxable capital)					
Peer group comparability					
Other (please specify):					

5. **How important is global consistency of accounting treatment (Please mark the box that best describes your view in response to each of the following statements):**

	Not at all			Very much so	
	1	2	3	4	5
Current situation, where the same transaction can achieve off balance sheet treatment under one set of accounting standards but not under another, is acceptable.					
Consistency and harmonisation is desirable only to the extent that many securitisation transactions achieve off balance sheet treatment.					
Consistency and harmonisation is paramount irrespective of whether the end result is on or off balance sheet treatment.					
Consistency and harmonisation is worth exploring to the extent that some form of compromise between the treatments under US GAAP and IFRS can be achieved.					

Section C - Current Accounting Standards

6. a) What GAAP is relevant to you?

- US
- IFRS
- U.K.
- Japanese
- Other (please specify) _____

b) Are any of these of *primary* relevance to you?

Y N
 If yes, which one? (please specify)

7. To the extent that you use *US GAAP*:

	Not at all		Very much so		
	1	2	3	4	5
Are you satisfied with the accounting treatment for securitisation transactions (e.g., FAS 140, FIN 46R) US GAAP produces?					
If not please specify why and in what areas:					

	Not at all		Very much so		
	1	2	3	4	5
Do you believe that US GAAP accounting reflects the economic reality of securitisation transactions?					
If not please specify why and in what areas:					

8. To the extent that you use (or are about to use) IFRS:

	Not at all			Very much so	
	1	2	3	4	5
Are you satisfied with the accounting treatment for securitisation transactions that IFRS produces?					
If not please specify why and in what areas:					

	Not at all			Very much so	
	1	2	3	4	5
Do you believe that IFRS accounting reflects the economic reality of securitisation transactions?					
If not please specify why and in what areas:					

9. To the extent that you use a GAAP *other* than U.S. GAAP or IFRS (please specify which):

	Not at all			Very much so	
	1	2	3	4	5
Are you satisfied with the accounting treatment for securitisation transactions that it produces?					
If not please specify why and in what areas:					
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	Not at all			Very much so	
	1	2	3	4	5
Do you believe that this accounting reflects the economic reality of securitisation transactions?					
If not please specify why and in what areas:					
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Section D - Your Views on the Way Forward

10. a) How should *consolidation* be determined?

Y ___ N ___ Risks and rewards (e.g. access to residual interest and exposure to downward performance)

Y ___ N ___ Control (e.g., power to control access to benefits; concept of a QSPE)

Y ___ N ___ Combination of risks /rewards and control

Other (please describe):

b) Please make any other comments you feel are appropriate:

11. Which model should be used for *derecognition*:

Y ___ N ___ Risks and rewards

Y ___ N ___ Control

Y ___ N ___ Combination of risks/rewards and control

Y ___ N ___ Other (please describe)

12. If a *risks and rewards* model is adopted for derecognition and/or consolidation:

a) What risks need to be considered (please list)

b) Please make any other comments you feel are appropriate:

13. If a *control* model is adopted for derecognition and/or consolidation:

	Not at all			Very much so	
	1	2	3	4	5
How important decision making powers in establishing control?					
What decision making powers are important indicators of control?					

Please make any other comments you feel are appropriate :					

14. Financial components

a) **Is the concept of a financial components approach (i.e., where each party to a transaction recognizes and accounts for components of financial assets and liabilities) worth exploring?**

___ Y
___ N

b) **If so, can the components to which the transferor is exposed or that it will receive post-securitisation be reliably measured and recognised?**

___ Y
___ N

c) **If so, are there any circumstances when the transferred asset should remain completely on balance sheet? Please describe:**

d) **How should separate financial components be measured (e.g. fair value, maximum exposure)? Please describe:**

15. Linked /Matched Presentation

a) **Is the concept of linked/matched presentation to reflect the hybrid nature of a securitisation – in part financing, in part repackaging of risks – worth exploring?**

____ Y
____ N

b) **If linked/matched presentation is included as a possible outcome, what should the criteria be? (Please list):**

c) **Please make any other comments you feel are appropriate:**

16. Accounting for originated vs. acquired assets

	Not at all			Very much so	
	1	2	3	4	5
Is it important to differentiate between the accounting for assets originated by a company and those purchased/warehoused with a view to securitisation?					

If so, how should this “differentiation” be made? Please describe:

Thank you for your time and input.

Appendix

Securitisation Forum Staff Contacts:

American Securitization Forum:	George Miller (Head of ASF) Tel: 00 1 646 637 9216 Survey responses may be transmitted to Ida Cece of the American Securitization Forum via e-mail at icece@americansecuritization.com or via facsimile at 00 1 646 637 9124
The Bond Market Association:	Sarah Starkweather Tel: 00 1 646 637 9292 Email: sstarkweather@bondmarkets.com or via facsimile at 00 1 646 637 9130
Australian Securitisation Forum:	Bronwyn McMahon Tel: 00 61 2 9776 7988 Email: asf@securitisation.com.au
European Securitisation Forum:	Scott Rankin (Head of ESF) Tel: 00 44 20 7743 9333 Email: srankin@europeansecuritisation.com Survey responses may be transmitted to Jo Carlile of the European Securitisation Forum via e-mail at jcarlile@europeansecuritisation.com

GSACC Co-Chairs:

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