

# Latvia



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### 1 Receivables Contracts

- 1.1 **Formalities.** In order to create an enforceable debt obligation of the debtor 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 receivable "contract" be deemed to exist as a result of historic relationships?

Generally, it is not necessary for the creation of an enforceable debt obligation that the sale of goods or services is evidenced by a formal receivable contract, as it is permissible to form a contract by one party making an offer and the other party accepting such offer. An invoice would create an enforceable debt obligation only where the receivable contract has already been made between the debtor and the seller or where the invoice serves as acceptance of the debtor's offer. Since the practice which the parties have established between themselves may serve to determine the intent of the parties to the contract, a receivable contract may, in certain situations, be deemed to exist as a result of historic relationships.

- 1.2 **Consumer Protections.** Do your country'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; or (c) provide other noteworthy rights to consumers with respect to receivables owing by them?

The interest rate applicable to consumer credit must be calculated in accordance with the mathematical formula set out in the applicable regulations relating to consumer credit. Unless otherwise agreed, any late payments are subject to statutory interest at a rate equal to the sum of a reference rate and 7% or, where the debtor is a consumer, at a rate equal to 6%. The reference rate currently is 5%, however it is subject to changes by the Central Bank of Latvia semi-annually to reflect the fluctuations in the refinancing rate. In the case of consumer loans, the consumers have the right to demand that no fee is charged for repayment of the loan ahead of schedule and that interest accrues only for the time when the loan has actually been outstanding.

- 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 of receivables?

No, there are no different requirements or laws that would apply to the sale of receivables where the debtor is the government or a government agency.

### 2 Choice of Law - Receivables Contracts

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

Latvia is a party to the 1980 Rome Convention on the law applicable to contractual obligations (the "Rome Convention"). Pursuant to the Rome Convention, to the extent that the law applicable to the contract has not been chosen, the contract shall be governed by the law of the country with which it is most closely connected. Subject to several exceptions, it is presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or incorporate, its central administration. However, if the contract is entered into in the course of that party's trade or profession, that country shall be the country in which the principal place of business is situated or, where under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated.

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

Pursuant to the Rome Convention, parties to a contract are generally free to choose the law to govern the contract. It is unlikely that, where all elements relevant to the situation at the time of the choice of the governing law are connected with Latvia, the court in Latvia would not give effect to the choice of Latvian law as the governing law of the contract.

- 2.3 **Freedom to Choose Other Law.** If the seller and the debtors are resident in your country, and the transactions giving rise to the receivables and the payment of the receivables take place in your country, can the seller and the debtor choose a different country's law to govern the receivables contract and the receivables?

In line with the Rome Convention, the choice by a domestic seller and a domestic debtor of a foreign law to govern the receivable

contract and the receivables would be generally upheld by Latvian courts even if the transactions giving rise to the receivables and the payment of the receivables take place in Latvia. However, according to the Rome Convention, the fact that the parties have chosen a foreign law does not, where all other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of the mandatory rules of that country. Accordingly, the choice of a foreign law in the given situation would not prejudice the application of the mandatory rules of Latvian law. In addition, as regards receivable contracts relating to the sale of goods or services to consumers, a choice of law clause, although generally allowed, cannot set aside to the detriment of the consumer any mandatory rules of the country in which the consumer has his habitual residence.

**2.4 Seller Resident.** If the seller is resident in your country, and the seller and the debtor choose the law of your country to govern their receivables contract, will a court in your country give effect to their choice of law?

In line with the Rome Convention, the choice by the seller and the debtor of Latvian law to govern the receivables contract would be generally upheld by Latvian courts also in a situation where only the seller is resident in Latvia, subject however to the qualifications set forth in the answer to question 2.3.

**2.5 Debtor Resident.** If the debtor is resident in your country, and the seller and the debtor choose the law of your country to govern their receivables contract, will a court in your country give effect to their choice of law?

In line with the Rome Convention, the choice by the seller and the debtor of Latvian law to govern the receivables contract would be generally upheld by Latvian courts also in a situation where only the debtor is resident in Latvia, subject however to the qualifications set forth in the answer to question 2.3.

### 3 Choice of Law - Receivables Purchase Agreement

**3.1 Freedom to Choose Other Law.** If your country's law governs the receivables, and the seller sells the receivables to a purchaser in another country, and the seller and the purchaser choose the law of the purchaser's country or a third country to govern their sale agreement, will a court in your country give effect to their choice of law?

In line with the Rome Convention, the choice by a domestic seller and a foreign purchaser of a foreign law to govern the sale agreement would be generally upheld by Latvian courts, subject however to the qualifications set forth in the answer to question 2.3.

**3.2 Other Advantages.** Conversely, if another country's law governs the receivables, and the seller is resident in your country, are there circumstances where it would be beneficial to choose the law of your country to govern the sale agreement?

Since the application by a court of one country of the law of another country may be associated with certain problems, it may be advisable that the Latvian law is chosen to govern the sale agreement in a situation where Latvian courts have jurisdiction to settle the disputes arising in connection with the sale agreement.

**3.3 Effectiveness.** In either of the cases described in questions 3.1 or 3.2, will your country's laws apply to determine (i) whether the sale of receivables is effective as between the seller and the purchaser; (ii) whether the sale is perfected; and/or (iii) whether the sale is effective and enforceable against the debtors?

In line with the Rome Convention, the effectiveness of the sale of receivables as between the seller and the purchaser would generally be determined in accordance with the law which applies to the sale agreement. Accordingly, Latvian law would apply to determine the effectiveness of the sale of receivables as between the seller and the purchaser where the parties have chosen Latvian law to govern the sale agreement.

Since the perfection of the sale of receivables and effectiveness thereof against third parties is a proprietary rather than a contractual issue, Latvian courts would likely apply the law of the debtor's domicile as the *lex situs* to determine whether the sale is perfected. Accordingly, Latvian law would apply to determine whether the sale is perfected where the debtor is domiciled in Latvia. Please note that the applicability of the law of the debtor's domicile as the *lex situs* in determining the law governing the perfection and effectiveness of the sale of receivables against third parties has not yet been tested in practice, and Latvian courts may take another route to select the applicable law to determine these issues.

In line with the Rome Convention, the effectiveness and enforceability of the sale of a receivable against the debtor would generally be determined in accordance with the law governing the receivable. Accordingly, Latvian law would apply to determine the effectiveness and enforceability of the sale of a receivable against the debtor where the receivable is governed by Latvian law.

## 4 Asset Sales

**4.1 Sale Methods Generally.** In your country what is (are) the customary method(s) for a seller to sell accounts receivables to a purchaser?

For the seller to sell accounts receivable to a purchaser, the seller generally needs to enter into a sale agreement with the purchaser. Although the sale agreement does not necessarily have to be in written form, such form is generally required for the agreement to become enforceable and is recommended for evidence purposes.

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

Generally, the assignment of a receivable takes effect against third parties as from the time of assignment, therefore the priority of assignees is determined in accordance with the principle of *prior tempore, potior in iure*. For the assignment to take effect against the debtor, the assignee must however notify the debtor of the assignment. The issue of perfection of the sale of accounts receivable against any later purchasers is however somewhat ambiguous under Latvian law. Where one and the same receivable has been sold to two or more purchasers, the purchaser which has notified the debtor of the sale may be held to have priority over any other purchasers even if they have entered into the sale agreement earlier. Accordingly, it is recommended to perfect the sale of an account receivable by the purchaser notifying the sale to the debtor.

**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?**

Where the receivable is documented by a negotiable promissory note, the perfection of the sale thereof requires the physical delivery of the note to the purchaser. The perfection of the sale of mortgage loans and consumer loans is generally the same as described in the answer to question 4.2. However, in order for the purchaser of a mortgage loan to benefit from the mortgage, the change of the creditor additionally needs to be registered with the Land Registry. Marketable debt securities are typically dematerialised, and the perfection of sale thereof requires them to be transferred to the purchaser's book-entry account.

**4.4 Debtor Notification. Must the seller or the purchaser notify debtors of the sale of receivables in order for the sale to be an effective sale against the debtors?**

The effectiveness of the sale of an account receivable vis-à-vis the debtor is generally subject to a notification of the sale being served to the debtor. The notification needs to be served by the purchaser, and a notice served by the seller would not suffice to give effect of the sale vis-à-vis the debtor unless the seller is acting as the purchaser's agent. It is only upon the notification of the sale of the account receivable to the debtor that the purchaser becomes entitled to enforce the debt directly against the debtor, and the debtor is prevented from setting off the receivable against any obligations of the seller to the debtor.

**4.5 Debtor Consent. Must the seller or the purchaser obtain the debtors' consent to the sale of receivables in order for the sale to be an effective sale against the debtors? Does the answer to this question vary if (a) the receivables contract does not prohibit assignment but does not expressly permit assignment; or (b) the receivables contract expressly prohibits assignment?**

Generally, the debtor's consent is not required for the sale of the receivable to take effect, and the sale is effective as between the seller and the purchaser even if the debtor is not aware of the sale. However, should the receivables contract expressly prohibit assignment, the sale of the receivable would only take effect against the debtor provided that the debtor consents to the sale.

**4.6 Liability to Debtor. If the seller sells receivables to the purchaser even though the receivables contract expressly prohibits assignment, will the seller be liable to the debtor for breach of contract?**

As described in the answer to question 4.5, in a situation where the receivables contract expressly prohibits assignment, the sale cannot be invoked against the debtor unless the debtor consents to the sale. Theoretically, the seller may be held liable to the debtor for an attempt to sell the receivable, e.g., in the form of penalties if such are provided by the receivables contract.

**4.7 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., debtor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics?**

No, the sale document does not need to specifically identify each of

the receivables to be sold and it may therefore refer to, for example, "all existing and future receivables". The description of the receivables must, however, sufficiently identify them. In case of the sale of separate receivables, they need to be identified by at least the debtor name and the details of the underlying receivable contract. The receivables being sold do not have to share objective characteristics.

**4.8 Economic Effects on Sale. What economic characteristics of a sale, if any, might prevent the sale from being perfected? Among other things, to what extent may the seller retain (a) credit risk; (b) interest rate risk; and (c) control of collections of receivables without jeopardizing perfection?**

Since the purchaser's notification on sale of the receivable deprives the debtor of the right to discharge the debt by payment to the seller, the seller may not retain the right to collect the receivable, except in the capacity of the purchaser's agent. Any arrangements as to retention by the seller of credit risk, interest rate risk or control of collections on receivables may cause or at least contribute to the risk that the transaction may be challenged on the grounds that the legal form of the transaction does not correspond to the intent of the parties thereto. Also, the collection of the receivables by the seller by virtue of an agency arrangement may cause difficulties if the seller becomes insolvent. For example, should the collections be co-mingled with the seller's own funds, the collections may fall in the seller's insolvency estate.

**4.9 Continuous Sales of Receivables. Can the seller agree in an enforceable manner (at least prior to its insolvency) to continuous sales of receivables?**

Generally, an agreement on continuous sales of receivables would be valid and enforceable. Subject to the potential application of rules on augmentation of the seller's estate upon insolvency discussed in the answer to question 6.3, an agreement on continuous sales of receivables would also survive declaration of insolvency of the seller under the existing insolvency laws in Latvia.

**4.10 Future Receivables. Can the seller commit in an enforceable manner (both prior to and after its insolvency) to sell receivables to the purchaser that come into existence after the date of the sale contract (as in a "future flow" securitisation)?**

Generally, an agreement on sale of receivables that come into existence after the date of the sale contract would be valid and enforceable. Subject to the potential application of rules on augmentation of the seller's estate upon insolvency discussed in the answer to question 6.3, an agreement on sale of receivables that come into existence after the date of the sale contract would also survive declaration of insolvency of the seller under the existing insolvency laws in Latvia.

**4.11 Related Security. What additional formalities must be fulfilled for the concurrent transfer of related security to be enforceable? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?**

In order for the purchaser of an account receivable to benefit from any commercial pledge or mortgage established to secure that account receivable, the change of the creditor needs to be registered with the Commercial Pledge Registry or the Land Registry,

respectively. For the purchaser of an account receivable to benefit from any guarantee established to secure that account receivable, the change of creditor needs to be notified to the guarantor.

## 5 Security Interests

**5.1 Back-up Security.** Is it customary in your country to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that the sale is deemed by a court not to have been perfected?

We are not aware of any cases where "back-up" security interest would have been taken in Latvia over the seller's ownership interest in the receivables in the event that the sale is deemed by the court not to have been perfected.

**5.2 Seller Security.** If so, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your country, and for such security interest to be perfected?

Depending on the status of the parties involved and the type of accounts receivable, the granting of a security interest in the accounts receivable is possible by way of creation of commercial pledge, financial collateral or possessory pledge.

Where the seller is a commercial undertaking or where the accounts receivable are documented as bonds of closed issues, the security interest in accounts receivable can be granted only by way of commercial pledge. The creation and perfection of a commercial pledge generally requires execution of a commercial pledge agreement between the parties and registration of the pledge with the Commercial Pledge Registry.

Where any of the parties falls under any of the categories of eligible parties to a financial collateral agreement listed by the Financial Collateral Law (in particular, if any of them is a financial institution subject to prudential supervision by the competent authorities of a Member State of the European Union) and the accounts receivable fall under the category of financial instruments, the security interest in the accounts receivable can be granted by way of financial collateral. The creation and perfection of a financial collateral generally requires execution of a financial collateral agreement between the parties and making a record on such financial collateral in the book-entry account with the financial institution holding that account.

In all other cases, the security interest in the accounts receivable can be granted by way of a possessory pledge. The creation and perfection of a possessory pledge generally requires execution of a possessory pledge agreement between the parties and transfer of the accounts receivable under the possession of the grantee of the security interest.

**5.3 Purchaser Security.** What are the formalities for the purchaser granting a security interest in receivables and related security under the laws of your country, and for such security interest to be perfected?

The formalities for granting of security interest in accounts receivable are the same as described in the answer to question 5.2 irrespective of whether the security interest is granted by the seller or the purchaser.

**5.4 Recognition.** If the purchaser grants a security interest in the receivables under the laws of the purchaser's country or a third country, and that security interest is valid and perfected under the laws of that other country, will it be treated as valid and perfected in your country?

Yes, a security interest granted by the purchaser in the receivables under the laws of the purchaser's country or a third country would generally be treated as valid in Latvia provided that such security interest has been granted and perfected in accordance with the *lex situs* of the receivables. No parallel perfection of the security interests in Latvia is required.

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

As noted in the answer to question 5.2, the granting and perfection of security interests in promissory notes would depend on whether the promissory notes fall under the category of bonds of closed issue or financial instruments. While in the former case the security interests would need to be granted by way of a commercial pledge, in the latter case the security interest would need to be granted either by way of financial collateral (provided that either of the parties falls under any of the categories of eligible parties to a financial collateral agreement listed by the Financial Collateral Law) or a possessory pledge.

Marketable debt securities would likely fall under the category of financial instruments, therefore, the security interests in or in connection with such securities would need to be granted either by way of financial collateral (provided that either of the parties falls under any of the categories of eligible parties to a financial collateral agreement listed by the Financial Collateral Law) or a possessory pledge.

No specific requirements would apply to the creation and perfection of security interests in or in connection with mortgage loans or consumer loans.

## 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 country's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables ("automatic stay")? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected?

Provided that the receivables have been duly assigned to the purchaser, such receivables would not form part of the seller's insolvency estate and the purchaser would not be prevented from collecting, transferring or otherwise exercising ownership rights over the receivables by the seller becoming subject to an insolvency proceeding. The insolvency administrator would not have the ability to stay collection and enforcement actions until he determines that the sale is perfected. Please see however the answer to question 6.5.

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

Latvian insolvency laws would not generally allow the insolvency administrator to prohibit exercise of rights by the purchaser by means of injunction, stay order or other action.

**6.3 Suspect Period.** 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 insolvency proceeding?

In the case of the seller's insolvency, the following transactions could be declared void by the court at the request of the insolvency administrator:

- 1) any transaction entered into by the seller after the date of submission of the insolvency petition where the seller has intentionally caused loss to the creditors, irrespective of whether or not the counterparty to the transaction was aware of such causing of loss to the creditors;
- 2) any transaction entered into by the seller within five years before the date of insolvency where the seller has intentionally caused loss to the creditors and the counterparty to the transaction was aware of such causing of loss to the creditors; or
- 3) any transaction entered into by the seller within five years before the date of insolvency where it has been established by the court that the insolvency of the seller has been caused by criminal action and the counterparty to the transaction was aware of such criminal action.

Should the transaction be entered into with an "insider" or in favour of an "insider", a rebuttable presumption would apply that such "insider" was aware of causing loss to the creditors. Similarly, should the transaction be entered into after the date of insolvency or within one month before the date of insolvency, a rebuttable presumption would apply that the seller has intentionally caused loss to the creditors.

In addition, any amounts paid by the seller in discharge of his obligations within the last six months before the insolvency date or after the insolvency date could be subjected to repayment by the order of the court if:

- 1) the amount was paid before the due date;
- 2) the payment of the amount resulted in the seller's actual insolvency; or
- 3) the debt was discharged to an "insider" unless the seller or the "insider" would prove that the seller was not insolvent at the time of the payment and the payment did not result in the seller's actual insolvency.

**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?

Should the seller have collected any receivables as the purchaser's agent, any amounts which have been co-mingled with the seller's own funds would be considered part of the seller's insolvency estate.

**6.5 Effect of Proceedings on Future Receivables.** What is the effect of the initiation of insolvency proceedings on (a) sales of receivables that have not yet occurred or (b) on sales of receivables that have not yet come into existence?

Latvian insolvency laws do not currently provide any straightforward answer as to the effect of the initiation of insolvency proceedings on receivables that have been assigned but have not yet come into existence. The sale of receivables coming into existence after the initiation of insolvency proceedings may be subject to the challenging proceedings as described in the answer to question 6.3. Any receivables may be assigned during the insolvency proceedings only in case the seller is declared bankrupt and the due date of the receivables has not fallen due before the end of the bankruptcy proceedings or the recovery of such receivables is impossible.

## 7 Special Rules

**7.1 Securitisation Law.** Does your country have laws specifically providing for securitisation transactions? If so, what are the basics?

No, there are no laws in Latvia that would specifically provide for securitisation transactions.

**7.2 Securitisation Entities.** Does your country 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 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?

No, there are no laws in Latvia that would specifically provide for the establishment of special purpose entities for securitisation.

**7.3 Non-Recourse Clause.** Will a court in your country give effect to a contractual provision (even if the contract's governing law is the law of another country) limiting the recourse of parties to available funds?

No, a limitation of the recourse of parties to available funds would not be generally upheld by Latvian courts.

**7.4 Non-Petition Clause.** Will a court in your country give effect to a contractual provision (even if the contract'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?

No, it is a general understanding under Latvian law that a waiver to take legal action or to commence an insolvency proceeding is not valid and enforceable.

**7.5 Independent Director.** Will a court in your country give effect to a contractual provision (even if the contract'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?

In principle, it is possible to subject the taking of certain specified actions (such as commencement of insolvency proceedings) to the company's management board receiving an approval of the company's supervisory board. Due to the limited scope of the organisational documents of Latvian entities, it may not be possible to include all such obligations in those documents.

## 8 Regulatory Issues

**8.1 Required Authorisations, etc.** Assuming that the purchaser does no other business in your country, 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 license or its being subject to regulation as a financial institution in your country? Does the answer to the preceding question change if the purchaser does business with other sellers in your country?

Although the purchase and collection of receivables may, if these form part of a securitisation scheme, fall under the category of financial services as defined by the Credit Institutions Law, such activities are not reserved exclusively to entities permitted to provide banking services in Latvia. Accordingly, the purchaser would not be required to obtain a licence to carry out any of such activities and would not be subject to regulation as a financial institution in Latvia. Where the purchaser is a foreign entity, the purchase and collection of receivables may, in certain circumstances, create a risk of permanent establishment which will further be discussed under question 9.6.

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

Where the debtors are natural persons, the processing of personal data (for example, collection, storage or transfer of data) is subject to the requirements of the Natural Persons Data Protection Law. In particular, some types of processing of such data may require the consent of the data subjects and, where a personal data filing system is organised, such organisation may require the system to be registered with the Data State Inspection. In addition, unless the consent of the data subject is obtained, the transfer of personal data abroad would be permissible only as long as the country to which the data are transferred ensures at least the same level of protection of personal data as provided in Latvia and would be subject to an approval of the Data State Inspection.

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

In the case of consumer credit, the purchaser would generally be bound by the provisions of the Consumer Protection Law and the

applicable regulations relating to consumer credit. In particular, the purchaser would be bound by the obligation to accept repayment of credit before maturity without imposing any penalties for such early repayment and to apply an interest rate which has been calculated in accordance with the mathematical formula set out in the applicable regulations relating to consumer credits. Should the consumer credit contract provide misleading information as to the applicable interest rate or other costs, or should the applicable interest rate not be calculated in accordance with the mathematical formula set out in the regulations relating to consumer credits, the purchaser would be bound to accept the consumer paying interest at the statutory rate of 6% per annum.

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

No, there are no laws that would restrict the exchange of Latvian lats for other currencies or the making of payments in Latvian lats to persons outside Latvia.

## 9 Taxation

**9.1 Withholding Taxes.** Will any part of payments on receivables by the debtors to the seller or the purchaser be subject to withholding taxes in your country? 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?

Latvian withholding tax may apply to certain categories of receivables payable by Latvian resident companies or permanent establishments of non-resident companies to non-residents of Latvia, such as dividends, income from participation in partnerships, distribution of profit of certain types of cooperative societies, remuneration for management or consultancy services, interest to related persons or entities, payments for intellectual property, remuneration for use of property situated in Latvia, and remuneration for sale of real property situated in Latvia. In addition, with some exceptions, withholding tax also applies to all payments by Latvian resident companies or permanent establishments of non-resident companies to legal, natural or other persons located or established in low-tax and tax-free countries or territories listed in the applicable regulations.

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

No specific accounting policy has to be adopted with regard to securitisation.

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

No stamp duties or other documentary taxes are imposed on sales of receivables.

- 9.4 Value Added Taxes. Does your country 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?

Sales of goods or services will in most cases be subject to value added tax (VAT) at the rate of 18%. By way of exception, sales of receivables are VAT exempt. The fees for collection agent services will likely be subject to VAT at the rate of 18%. In case the services are rendered for an EU resident taxable person (registered as a VAT payer) the reverse charge mechanism is applied whereby the fees are not subject to Latvian VAT, but are subject to VAT at the rate as applied in the country of the recipient of the service.

- 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 against the purchaser or on the receivables or collections for the unpaid tax?

The purchaser can be liable to pay the VAT in certain cases when the reverse charge mechanism is applicable.



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- 9.6 Doing Business. Assuming that the purchaser conducts no other business in your country, 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 debtors, make it liable to tax in your country?

Non-residents are liable for taxes in Latvia only for the part of their income derived from Latvia. The tax on income deriving from Latvia is, however, subject to mitigation based on double tax treaties. Generally, Latvian double tax treaties follow the OECD model convention.

As a general rule, the mere purchase and enforcement of the receivables should not create a permanent establishment and liability to tax for the purchaser in Latvia. However, should a domestic seller be appointed as a service and collection agent of the purchaser, a permanent establishment could be held to exist for Latvian tax purposes provided that such an agent would also be authorised to conclude contracts in the name of the purchaser, and if it would habitually exercise this authority. In case the seller was construed as the independent agent of the purchaser, a permanent establishment would generally exist for Latvian tax purposes if the service and collection services carried out by the seller would be held to go beyond the ordinary course of its business.

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