Australian Securitisation Forum

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21 February 2020

To The Honourable Tim Pallas, MLA
Treasurer of Victoria
Level 4, 1 Treasury Place
East Melbourne 3002

Copy Ms Paula Thorne
Executive Director, Policy Advisory and Legal Services
State Revenue Office Victoria
GPO Box 1641
Melbourne 3001

Dear Sir,

Impact of the State Taxation Acts Amendment Act 2019 on securitisation of equipment finance receivables

1 Introduction

This submission is divided into the following sections:

(a) section 2 contains an executive summary of the submission.

(b) section 3 provides an introduction to the Australian Securitisation Forum ("**ASF**");

(c) section 4 describes the process of securitisation in relation to equipment finance receivables;

(d) section 5 describes the current transfer duty position in Victoria as it effects the securitisation of asset finance receivables;

(e) section 6 outlines the potential impact of the *State Taxation Acts Amendment Act 2019* on that type of securitisation; and

(f) section 7 sets out the ASF's recommendations to address the issues raised by the submission.

2 Executive summary

The past decade has seen significant growth in the securitisation of equipment finance receivables. In this market receivables such as those under operating leases, finance leases, hire purchase agreements and chattel mortgages have been securitised. Queensland and New South Wales have each included asset-backed securitisation exemptions in their duties legislation, alongside their mortgage backed securitisation exemption. Victoria has a mortgage backed securitisation exemption but given its historically narrower duty base, the *Duties Act 2000* (Vic) has not, until recently, had a significant impact on the securitisation of equipment finance receivables.

The ASF is concerned that Victoria has recently expanded its transfer duty base in a way which will increase the costs of securitising equipment finance receivables in particular where the equipment is fixed to land. These increased costs erode the benefits of securitisation to small business and consumers, being lower financing costs for equipment financing arrangements.

To prevent the erosion of those benefits for small businesses and consumers, it would be beneficial if the Duties Act were amended to introduce an exemption for the transfer of dutiable property comprising equipment finance receivables in connection with asset backed securitisations.

3 Introduction to the Australian Securitisation Forum

The ASF was established in 1989 and is the peak body representing the securitisation industry in Australia. Its role is to promote the development of securitisation in Australia by facilitating the formation of industry positions on policy and market matters, representing the industry to local and global policymakers and regulators and advancing the professional standards of the industry through education and market outreach opportunities.

The ASF is comprised of a National Committee of 12 members, 10 task specific sub-committees and a national membership of 138 organisations. ASF members include Australia's banks, domestic and foreign investment banks, building societies and credit unions, non-bank mortgage originators, investors and many other participants in the Australian financial system including organisations that provide professional services to the securitisation industry (such as trustee companies, mortgage insurers, ratings agencies and the major legal and accounting firms).

4 Securitisation of equipment finance receivables

Securitisation essentially involves the repackaging of large numbers of illiquid receivables into liquid securities which can be issued to investors. The repackaging is achieved by the sale of a portfolio of receivables into a securitisation special purpose entity, which is typically a unit trust. The trustee is the issuer of the securities to the investors, which may be either debentures, units in the unit trust or both. The advantage of securitisation compared to other potential sources of funding which an equipment financing business can choose from is that the cost of the funding is typically lower than other sources of funding. This is because securitisation techniques allow finance to be provided by wholesale debt capital markets.

In the context of this submission, the kinds of receivables which are being securitised are receivables which arise under equipment financing arrangements such as operating leases, finance leases, chattel mortgages and hire purchase agreements. Relevantly to this submission, the most common types of equipment which business and personal customers finance through these arrangements are vehicles,[1] industrial equipment, medical equipment, dental equipment and general office equipment such as computers and photocopiers, although this is by no means an exhaustive list.

The diagram in Schedule 1 illustrates how the process of securitisation fits into the typical business operating model of an equipment financier.

Typically, an equipment financier has its own customer base or obtains access to customers through a network of brokers who introduce customers to the equipment financier. Initially, the equipment financier may use its own funds to acquire equipment from a supplier and then enter into equipment financing arrangements with customers such as a finance lease, operating lease or a hire purchase agreement. In other cases, the customer will purchase the equipment and borrow money from the equipment financier in order to pay the purchase price to the relevant equipment supplier. The customer will grant a security interest over the equipment (also known as a “chattel mortgage”) in order to secure the repayment of the loan.

Even though the equipment financier may use its own funds initially, the next step in the process involves the equipment financier transferring to a securitisation special purpose entity the right to payment (or repayment) and related rights for a purchase price. In most (but not necessarily all) cases, the related rights include title to equipment, which is the subject of a finance lease, operating lease or hire purchase agreement. Where title to the equipment is not transferred, the seller may still be under a contractual obligation to take possession of the equipment, sell it and remit part or all of the sale proceeds to the securitisation special purpose entity. This may apply where, for example, the equipment lessee has stopped making lease payments and is in default.

This special purpose entity funds the purchase price by issuing notes (i.e. “asset-backed securities”) to a financier (typically a bank) and involve debt funding in the wholesale market starting at levels of around $100 million typically. These types of arrangements are typically referred to in the securitisation industry as “warehouse trusts”. This is because the relevant receivables and related rights are “warehoused” in this type of structure until a number of “warehouses” are refinanced into a special purpose entity which issues notes to investors in the wholesale capital markets. The special purpose entity in a “warehouse trust” arrangement will in some cases be in the same corporate group as the equipment financier. This is because the equipment financier will often own most, if not all, of the units in the special purpose trust.

Following an assignment to the special purpose entity under a warehouse trust, the securitisation vehicle will own the right to payment (or repayment) from the customer. One of the related rights which is often assigned to the special purpose entity is the ownership of the relevant equipment. The equipment is assigned so that if a customer defaults in payments under the lease, the equipment can be sold, and the proceeds applied to satisfy the amount owed by the customer to the trustee. In the case of a loan secured by a chattel mortgage, the chattel mortgage is also be assigned to the special

[1] Although vehicle financing arrangements are a significant type of equipment which is financed using securitisation techniques, the issues raised by the recent amendments to the Duties Act have very little impact on the securitisation of vehicle financing arrangements. Vehicle financing arrangements are mentioned for completeness only.

purpose entity in addition to the loan for essentially the same reasons (i.e. to provide the ability to sell the equipment in a default scenario).

Securitisation arrangements typically also allow the flexibility to refinance the funding provided by a financier in a “warehouse” structure. Typically, this involves the relevant receivables and related rights being moved into a new special purpose trust.

Once a significant pool of equipment finance receivables has been created and funded through a number of “warehouse trust” arrangements, the receivables and related rights are then moved to the trustee of a further special purpose trust. Since the value of the receivables and related rights held by this special purpose entity is significantly higher than in the “warehouse trust”, investing in the trust is more suitable for institutional investors in the wholesale debt capital markets. This kind of securitisation is usually referred to as a “term deal”.

Over time, the receivables which are beneficially owned by a special purpose entity may reduce as customers make the required payment. Once the total value of the receivables drops below a certain level, it is often desirable to unwind the securitisation transaction to save time and money on the ongoing administration of the securitisation transaction. When this happens, the equipment financier will repurchase the receivables and related rights at their then current value so that the “term deal” securitisation structure can be brought to an end.

5 History of securitisation exemptions in Australian duties legislation

The first securitisation stamp duty exemptions in Australia appeared in 1985 (in New South Wales). They were highly detailed and specific. The government's thinking in the context of mortgage-backed securitisations was expressed as follows:

> *“This government is now taking another positive step in the continuing process of financial reform with the abolition of further stamp duties. ... The purpose of these proposals is to promote the development of a fully-fledged secondary mortgage market dealing in mortgage backed securities and to facilitate the expansion and growth of the secondary mortgage market in corporate debt securities. ... I believe it is wrong to inhibit creativity in the market. ... The intent of the amendments is to promote the development of the secondary market and to provide considerable scope for innovation in the market. It is a valuable step forward if Sydney is to be a major financial centre in the South Pacific. ... It is expected that the development of a secondary mortgage market will provide a substantial boost to the supply of housing finance through the attraction of new investors into the housing finance market and by encouraging major financial institutions to be more active in providing funds for such purposes through a developed secondary market."*[2]

[2] New South Wales Legislative Assembly Hansard of 1 November 1984.

New South Wales and Victoria[3] developed securitisation exemptions[4] which focused on the key elements of the mortgage-backed securitisation market. Originally, the key focus of the securitisation industry was housing loans and the early securitisation exemptions were focused exclusively on those types of securitisations. Subsequently, the securitisation of trade receivables and equipment financing receivables securitisations has become quite common as well.

Those changes in the securitisation industry as well as changes to the duties legislation over the past 20 years have been the main drivers for the introduction of further specific securitisation exemptions. For example, just after the *Duties Act 2001* (Qld) was introduced, the legislation was amended to add mortgage-backed and asset-backed securitisation exemptions (sections 130C to 130I *Duties Act 2001* (Qld)). New South Wales introduced its asset-backed securitisation exemption[5] in 2010 as a result of certain New South Wales mortgage duty amendments. The ASF was closely involved in making submissions on these New South Wales and Queensland changes.

At the same as this submission, a similar submission is being made to the Treasurer of Western Australia in relation to some recent amendments to the *Duties Act 2008* (WA) which also concern equipment which is "fixed to land".

6 Impact of the *State Taxation Acts Amendment Act 2019*

6.1. Equipment fixed to land

The *State Taxation Acts Amendment Act 2019* has recently amended the Duties Act to add the following as an item of dutiable property in section 10(1)(ad):

> *"an interest in fixtures which is created, dealt with or held separately from an estate or interest in the land on which the fixtures are located"*

In this context, "fixtures" does not have its ordinary legal meaning because the expression includes not just common law fixtures but also "any other items fixed to land, including tenant's fixtures".[6] If an item of equipment is fixed by a customer to land owned by them another person the equipment is within section 10(1)(ad) of the Duties Act. A subsequent transfer of that equipment (without any other dutiable property) is therefore a dutiable transaction.

The terms of the equipment financing arrangement do not seek to prohibit relevant equipment from becoming a fixture or fixed to land in any way. This would usually not be acceptable to a customer because it places a restriction on how the customer can use the financed equipment. Even if such a restriction existed, it would be impractical to monitor whether the customer complies with the restriction on an ongoing basis. This is due to

[3] Currently, sections 251A and 251B of the Duties Act contain exemption from duty in connection with mortgage-backed securitisations. A corresponding exemption was also found in section [137] *Stamps Act 1958* (Vic) prior to it being replaced by the Duties Act.

[4] The Northern Territory had an exemption for a few years (section 56B(1) of the *Taxation (Administration) Act 1978* (NT) was repealed in 1994).

[5] See *Duties Act 1997* (NSW), section 284.

[6] See Duties Act, section 10(3).

the sheer volume of transactions which equipment financiers enter into. In a warehouse or term securitisation, depending on the value of the underlying equipment, there can be thousands of equipment finance receivables securitised.

The concession in section 57FA of the Duties Act does not apply in the context of a typical assignment of the item of equipment to a securitisation special purpose entity. This is because the aggregate dutiable value of all items which fall within section 10(1)(ad) will usually, if not always be greater than $2 million.

Although the corporate reconstruction 90% discount may be available in some circumstances, this still involves a transfer duty cost and requires a view to be formed about whether the items in question are fixed to land. Due to the number of underlying items of equipment involved in a typical securitisation transaction this is not practicable because the customer, rather than the owner, is in possession of the relevant equipment. As noted above, the original transfer to the securitisation vehicle is not the only type of transaction which may occur with respect to the equipment. The equipment may become subject to different special purpose trusts and may also be repurchased by the equipment financier. Even with the 90% discount the transfer duty cost of all of these transactions represent an increased cost which will erode the benefits of securitisation as a source of funding for equipment financiers and their customers.

6.2. Economic entitlements

Since an interest in “fixtures” which are held separately from the underlying land is now within the definition of dutiable property, this has a potential follow on consequence under the economic entitlement provisions in Chapter 2 of the Act. In cases where only a lease receivable is transferred and title to the equipment is **not** transferred, the equitable or legal assignment of the lease receivable is potentially an arrangement under which a person is or will be entitled to participate in the income, rents, profits derived from the “fixtures” or the sale proceeds from such “fixtures”. As such, the arrangement may attract duty even where title to the fixtures is not transferred. Therefore, the benefits of securitisation of equipment leasing receivables may still be eroded where title to the fixtures is not transferred but an economic entitlement is acquired.

6.3. Landholder duty issues

Occasionally, it becomes necessary to transfer the units in the special purpose securitisation entity. For example, this can occur where the seller is selling its wider business and needs to transfer the units to an entity outside of its corporate group. The definition of land holding and the expanded transfer duty base now make it more likely that landholder duty would be triggered just by virtue of a person having an entitlement to land holdings in Victoria which are also “fixtures” and which have a value of $1 million or more. This issue should also be addressed in order to provide parity with any transfer duty exemption which may be introduced for equipment lease receivable securitisations.

6.4. Transfers of chattel mortgages

A further example of the adverse impact of the *State Taxation Amendments Act 2019* is that, inadvertently, the transfer of a security interest in “fixtures” has been brought within the transfer duty base, even though the transfer of a security interest in every other type of dutiable property is expressly excluded from that base under section 10(1)(ac)(i) of the Act. This can be fixed by the insertion of words in section 10(1)(ac)(i) to refer not just to “dutiable property referred to in paragraph (a) or (ab) but also to paragraph (ad). This issue has the potential to affect not just the securitisation of equipment lease receivables but also transactions more generally. It is therefore considered appropriate for the drafting of section 10(1)(ac)(i) to be clarified more generally.

7 Recommendation

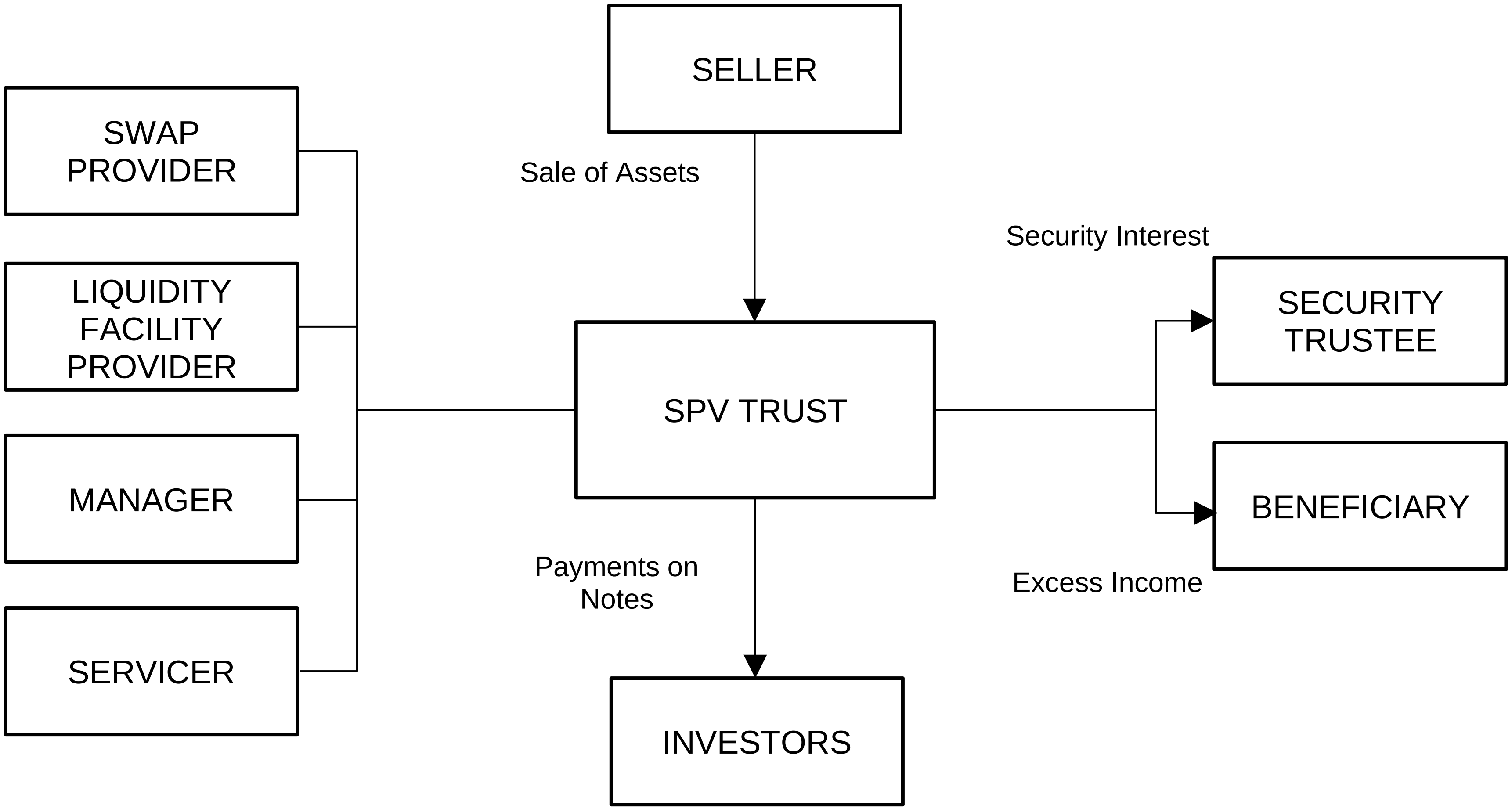
The ASF therefore urges Treasury to introduce a Bill into Parliament to amend the Duties Act to include an exemption for the transfer of dutiable property in connection with asset-backed securitisations whether by the transfer of title to fixtures or by the acquisition of an economic entitlement. To assist with your consideration of this proposal we have included in Schedule 2 a document which sets out what an asset-backed securitisation exemption for the Duties Act might look like. The drafting is modelled on the current wording of the mortgage-backed securitisation exemptions in sections 251A and 251B of the Duties Act. Proposed section 251C(3) would be effective to exempt a relevant acquisition from landholder duty where the interest in the trust qualifies as an asset-backed security.

Section 10(1)(ac)(i) of the Act should be amended to make clear that it also carves out from the definition of the dutiable property a security interest in fixtures.

If you would like to discuss any aspect of the above, please contact Chris Dalton or Robert Gallimore (Policy Executive).

Yours faithfully

Chris Dalton
Chief Executive Officer


SELLER
Sale of Assets
SWAP PROVIDER
LIQUIDITY FACILITY PROVIDER
MANAGER
SERVICER
SPV TRUST
Security Interest
SECURITY TRUSTEE
BENEFICIARY
Excess Income
Payments on Notes
INVESTORS

3 Definitions

(1) In this Act—

asset-backed security means—

(a) an interest in a trust that entitles the holder of or beneficial owner under the interest—

(i) to the whole or any part of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a financial asset or any money payable under the financial asset (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the financial asset or not); or

(ii) to the whole or any part of the rights or entitlements of a financier and any other rights or entitlements in respect of a pool of financial assets or any money payable under those financial assets (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the financial assets or not); or

(iii) to payments that are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of financial assets—

and that may, in addition, entitle the holder or beneficial owner to a transfer or assignment of the financial asset or financial assets; or

(b) a debt security (whether or not in writing) the payments under which by the person who issues or makes the debt security are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of financial assets; or

(c) any of the following—

(i) an interest in a trust creating, conferring or comprising a right or interest (whether described as a unit, bond or otherwise) of or on a beneficiary in a scheme under which any profit or income in which the beneficiaries participate arises from the acquisition, holding, management or disposal of prescribed property, or any instrument that evidences such a right or interest;

(ii) a security (whether or not in writing) the payments under which by the person who issues or makes the security are derived substantially from the income or receipts of prescribed property;

(iii) an interest in a trust, a debt security (whether or not in writing), an instrument or property that creates an interest in or charge over an interest in a trust, a debt security (whether or not in writing) or other instrument or property, to which paragraph (a) or (b) or subparagraph (i) or (ii) of this paragraph applies—

but does not include—

(f) a declaration of trust; or

(g) an instrument of a class or description of instruments, or property of a class or description of property, prescribed not to be an asset-backed security for the purposes of this definition;

financial asset means—

(a) a loan;

(b) a credit card account;

(c) a hire purchase agreement;

(d) a chattel lease, whether finance or operating;

(e) a vehicle dealer floor plan agreement;

(f) a security interest in any dutiable property;

(g) an asset which is the subject of an agreement referred to in paragraphs (a) to (e);

(h) the rights of a financier that are—

(i) usually conferred in relation to an asset referred to in paragraphs (a) to (e) ; and

(ii) incidental to the asset. ***[Note: this definition is modelled on the definition of "financial asset"in the Duties Act 2001 (Qld). The definition of "financial asset" in***

the Duties Act 1997 was modelled on the Queensland definition]

pool of financial assets means a pool or collection of assets—

(a) that consists solely of financial assets; or

(b) that consists substantially, or to the extent declared under subsection (2)(d), of financial assets or of money paid under mortgages, or both, and may include—

(i) cash;

(ii) investments of a kind referred to in section 4(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (ia), (j), (k) or (o) of the **Trustee Act 1958** as in force immediately before the commencement of section 4 of the **Trustee and Trustee Companies (Amendment) Act 1995**;

(iii) assets of a class of assets declared under subsection (2)(e);

prescribed property means any of the following—

(a) cash;

(b) investments of a kind referred to in section 4(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (ia), (j), (k) or (o) of the **Trustee Act 1958** as in force immediately before the commencement of section 4 of the **Trustee and Trustee Companies (Amendment) Act 1995**;

Chapter 11, Part 5—Asset-backed securities

251C Asset-backed securities

(2) No duty is chargeable under this Act in respect of a dutiable transaction in relation to a financial asset in connection with creating, issuing, marketing or securing an asset-backed security.

(3) No duty is chargeable under this Act in respect of—

(a) the issue or making of an asset-backed security; or

(b) the transfer or assignment of or other dealing with an asset-backed security; or

(c) the discharge, cancellation or termination of an asset-backed security.

251D Instruments issued for the purpose of creating, issuing or marketing asset-backed securities

No duty is chargeable under this Act in respect of an instrument that, in the Commissioner's opinion, was executed for the purpose of creating, issuing or marketing asset-backed securities.

3 Definitions

(1) In this Act—

~~***mortgage*** —~~

~~(a) subject to paragraph (b), has the meaning given by section 149;~~

~~(b) for the purposes of section 251A and the definitions of ***mortgage-backed security*** and ***pool of mortgages*** means a mortgage of any estate or interest in land, including a leasehold estate or interest in land, whether the land is situated in Victoria or elsewhere, and includes a charge over any such land;~~

asset~~mortgage~~-backed security means—

~~S. 3(1) def. of *mortgage-backed security* inserted by No. 46/2001 s. 3(1)(a), substituted by No. 30/2002 s. 3(1)(a).~~

(a) an interest in a trust that entitles the holder of or beneficial owner under the interest—

(i) to the whole or any part of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a ~~mortgage~~ financial asset or any money payable ~~by the mortgagor~~ under the ~~mortgage~~ financial asset (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the ~~mortgage~~ financial asset or not); or

(ii) to the whole or any part of the rights or entitlements of a ~~mortgagee~~ financier and any other rights or entitlements in respect of a pool of ~~mortgages~~ financial assets or any money payable ~~by~~

~~mortgagors~~ under those ~~mortgages~~ financial assets (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the ~~mortgages~~ financial assets or not); or

(iii) to payments that are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of ~~mortgages~~financial assets—

and that may, in addition, entitle the holder or beneficial owner to a transfer or assignment of the ~~mortgage or mortgages~~financial asset or financial assets; or

(b) a debt security (whether or not in writing) the payments under which by the person who issues or makes the debt security are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of ~~mortgages~~financial assets; or

(c) any of the following—

(i) an interest in a trust creating, conferring or comprising a right or interest (whether described as a unit, bond or otherwise) of or on a beneficiary in a scheme under which any profit or income in which the beneficiaries participate arises from the acquisition, holding, management or disposal of prescribed property, or any instrument that evidences such a right or interest;

(ii) a security (whether or not in writing) the payments under which by the person who issues or makes the security are derived substantially from the income or receipts of prescribed property;

(iii) an interest in a trust, a debt security (whether or not in writing), an instrument or property that creates an interest in or charge over an interest in a trust, a debt security (whether or not in writing) or other instrument or property, to which paragraph (a) or (b) or subparagraph (i) or (ii) of this paragraph applies—

but does not include ~~an instrument or property comprising~~—

~~(d) a mortgage; or~~

~~(e) the transfer of a mortgage; or~~

(f) a declaration of trust; or

(g) an instrument of a class or description of instruments, or property of a class or description of property, prescribed not to be ~~a mortgage~~an asset-backed security for the purposes of this definition;

financial asset means—

(a) a loan;

(b) a credit card account;

(c) a hire purchase agreement;

(d) a chattel lease, whether finance or operating;

(e) a vehicle dealer floor plan agreement;

(f) a security interest in any dutiable property;

(g) an asset which is the subject of an agreement referred to in paragraphs (a) to (e);

(h) the rights of a financier that are—

(i) usually conferred in relation to an asset referred to in paragraphs (a) to (e) ; and

(ii) incidental to the asset. ***[Note: this definition is modelled on the definition of "financial asset"in the Duties Act 2001 (Qld). The definition of "financial asset" in the Duties Act 1997 was modelled on the Queensland definition]***

pool of ~~mortgages~~ financial assets means a pool or collection of assets—

(a) that consists solely of ~~mortgages~~financial assets; or

(b) that consists substantially, or to the extent declared under subsection (2)(d), of ~~mortgages~~ financial assets or of money paid under mortgages, or both, and may include—

(i) cash;

(ii) investments of a kind referred to in section 4(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (ia), (j), (k) or (o) of the **Trustee Act 1958** as in force immediately before the commencement of section 4 of the **Trustee and Trustee Companies (Amendment) Act 1995**;

(iii) assets of a class of assets declared under subsection (2)(e);

prescribed property means any of the following—

(a) cash;

(b) investments of a kind referred to in section 4(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (ia), (j), (k) or (o) of the **Trustee Act 1958** as in force immediately before the commencement of section 4 of the **Trustee and Trustee Companies (Amendment) Act 1995**;

Chapter 11, Part 5~~4~~—Asset~~Mortgage~~-backed securities

~~Ch. 11 Pt 4 (Heading) inserted by No. 113/2003 s. 6(b).~~

251C~~A~~ Asset~~Mortgage~~-backed securities

~~S. 251A inserted by No. 46/2001 s. 20.~~

~~(1) No duty is chargeable under this Act in respect of a mortgage over the interest of a person in a pool of mortgages relating to debt securities that are mortgage-backed securities issued by the person to secure the repayment of financial accommodation provided to the person.~~

(2) No duty is chargeable under this Act in respect of ~~a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages~~a dutiable transaction

in relation to a financial asset in connection with creating, issuing, marketing or securing ~~a mortgage~~an asset-backed security.

(3) No duty is chargeable under this Act in respect of—

(a) the issue or making of an ~~mortgage~~asset-backed security; or

(b) the transfer or assignment of or other dealing with ~~a mortgage~~an asset-backed security; or

(c) the discharge, cancellation or termination of ~~a mortgage~~an asset-backed security.

~~(4) No duty is chargeable under this Act in respect of a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages for the purpose of creating, issuing, marketing or securing a mortgage-backed security—~~

~~(a) to a person entitled to a mortgage-backed security or a trustee or agent for such a person; or~~

~~(b) by or to a person who issues, makes or endorses a mortgage-backed security; or~~

~~(c) to a person who provides security (whether as a guarantor, surety or otherwise) to a person entitled to a mortgage-backed security or a trustee or agent for such a person—~~

~~if the mortgage is executed on or after 1 July 2001.~~

~~S. 251B inserted by No. 46/2001 s. 20.~~

251D~~B~~ Instruments issued for the purpose of creating, issuing or marketing asset~~mortgage~~-backed securities

No duty is chargeable under this Act in respect of an instrument that, in the Commissioner's opinion, was executed for the purpose of creating, issuing or marketing asset~~mortgage~~-backed securities.