Criteria | Structured Finance | Legal:

Asset Isolation And Special-Purpose Entity Methodology

May 29, 2025

1. This article presents S&P Global Ratings' global criteria for assessing non-U.S. legal risks in relation to asset isolation and the insolvency remoteness of special-purpose entities (SPEs) in structured finance transactions. For information about the initial publication of this article as of May 29, 2025, including key changes, the impact on ratings, and superseded criteria, see "Asset Isolation And Special-Purpose Entity Methodology Republished."

SCOPE AND OVERVIEW

2. These criteria (hereafter referred to as the global criteria) apply to all non-U.S. structured finance transactions globally that look to incorporate asset isolation and/or the insolvency remoteness of SPEs (including multiple-use SPEs). Except as noted below, the global criteria do not apply to U.S. structured finance transactions.
3. In Australia and New Zealand, S&P Global Ratings will apply the global criteria, subject to the considerations outlined in Appendix A.
4. In Canada, S&P Global Ratings will apply the global criteria, subject to the considerations outlined in Appendix B.
5. In Europe, S&P Global Ratings will apply the global criteria, subject to the considerations outlined in Appendix C.
6. In Japan, S&P Global Ratings will apply the global criteria, subject to the considerations outlined in Appendix D.
7. In the U.S, except as noted below, the global criteria do not generally apply. For U.S. structured finance transactions, S&P Global Ratings will apply its U.S. structured finance asset isolation and special-purpose entity criteria (hereafter referred to as the U.S. legal criteria; see "Related Publications").

LEGAL CONTACTS

Julie Lynch Bridson
London
+ 44 20 7176 3843
julie.lynchbridson
@spglobal.com

Vivien Yeung
Hong Kong
+852 2533 3502
vivien.yeung
@spglobal.com

Frank Staudohar
Toronto
+ 1 (416) 507 2502
frank.staudohar
@spglobal.com

METHODOLOGY CONTACTS

Andrew M Bowyer, CFA
London
+ 44 20 7176 3761
andrew.bowyer
@spglobal.com

Eric Gretch
New York
+ 44 20 7176 3464
eric.gretch
@spglobal.com

Takamasa Yamaoka
Tokyo
+ 81 3 4550 8719
takamasa.yamaoka
@spglobal.com

Key Publication Dates

- Original publication date: May 29, 2025
- Effective date: Immediately, except in jurisdictions that require local registration. In those jurisdictions, the criteria are effective only after the local registration process is completed.
- These criteria address the fundamentals set out in "Principles Of Credit Ratings."

8. When legal issues governed by non-U.S. law are relevant to U.S. structured finance transactions, such as the insolvency remoteness of non-U.S. SPEs and asset isolation from non-U.S. originator or sellers, we will apply the global criteria in conjunction with the U.S. legal criteria.
9. When legal issues governed by U.S. law are relevant to non-U.S. structured finance transactions, such as the insolvency remoteness of U.S. SPEs and asset isolation from U.S. originators or sellers, we will apply the U.S. legal criteria in conjunction with the global criteria.
10. To the extent that S&P Global Ratings may publish asset-specific criteria that discuss asset isolation or insolvency remoteness of SPEs, the relevant asset-specific criteria shall be applicable.
11. These criteria provide the market with a description of how we consider legal risks that could affect our assessment of the creditworthiness of structured finance debt issues. This article focuses on a discussion of:
    - Asset isolation in securitization and
    - The insolvency remoteness of SPEs (including multiple-use SPEs).
12. This criteria article also discusses related legal issues that may affect insolvency remoteness: clawback risk, set-off risk, and tax risk. In addition, challenge risk in securitizations and sources of comfort on legal issues are covered.
13. The second part of this article provides an overarching framework for our assessment of legal risks in structured finance transactions (other than U.S. structured finance transactions, save as noted above) from a global perspective, while the appendix sets out certain considerations in relation to certain particular jurisdictions and regions. In other jurisdictions or regions, we may apply the global criteria subject to other considerations where appropriate to reflect local law/local practice. Readers are also directed to existing S&P Global Ratings articles discussing legal criteria applicable to structured finance transactions on discrete asset types, where applicable, which may provide greater detail on how the general criteria described in this article may be applied in those contexts.
14. The criteria, as set out in this article, are not intended to be read as being prescriptive but rather as providing general criteria that guide S&P Global Ratings when we consider legal issues we view as relevant to the credit analysis of structured finance securities.

METHODOLOGY

Asset Isolation

15. We assess, under the applicable legal regime, the extent to which a securitization structure isolates the securitized assets from the insolvency risk of the entities that participate in the transaction. Typically, our analysis focuses on isolation from the entity or entities that originated and owned the assets before the securitization transaction.

16. A true sale of assets from the originator/seller to an insolvency-remote issuer is one method commonly used to achieve asset isolation in a securitization. As a general matter, the term "true sale" is commonly used in a securitization context to refer to a transfer of ownership of the securitized assets from an originator to an SPE. From a legal perspective, a true sale is generally understood to result in the assets ceasing to be part of the seller's bankruptcy or insolvency estate. There might also be other legal mechanisms, apart from true sale, that could achieve analogous isolation.

17. As a general matter, the insolvency and reorganization laws of the particular legal jurisdiction applicable to the originator determine the effect of an insolvency proceeding on the originator's assets (insolvency moratorium, disclaimer or rejection of contracts, treatment of secured creditors, etc.). Certain jurisdictions have legislated securitization regimes that may delineate the conditions and formalities under which a transfer of eligible assets can take place in order to achieve a true sale. In jurisdictions where no specific securitization statutes exist, case law precedents, general laws, accepted market practice, and/or legal or academic commentaries provide guidance to the legal counsel for the transaction parties on the conditions and formalities under which a transfer of securitizable assets can take place in order to achieve a true sale. Comfort as to whether a structure achieves a true sale of assets (whether under a legislated securitization regime or under general local laws) is often provided in the form of a legal opinion to that effect provided by the transaction parties' outside legal counsel.

Insolvency-Remoteness Of SPEs

18. S&P Global Ratings has adopted insolvency-remoteness criteria for its analysis of an SPE's insolvency remoteness. SPEs are entities that are typically used in a securitization transaction to house the assets that support the payment obligations usually represented by the securities issued by the SPE. In the context of securitization, the market often refers to these entities as insolvency-remote (or bankruptcy-remote) because they are typically structured to minimize the risk of their insolvency (voluntary or involuntary). The insolvency of an SPE may be caused, for example, by issues relating to the structure or activities of an SPE itself or by issues relating to the bankruptcy of a parent of an SPE. With respect to certain asset classes in certain jurisdictions, our analytical approach also considers the extent to which certain asset-level entities are consistent with the insolvency-remoteness criteria set out herein.

19. It is important to note that the terms "insolvency-remote" and "bankruptcy-remote" aren't legal terms; lawyers generally do not provide legal opinions as to whether an SPE is insolvency remote. In addition, these terms aren't synonymous with the terms "insolvency proof" or "bankruptcy proof." In the context of a rating analysis, insolvency remoteness of an SPE is a matter which S&P Global Ratings assesses based on its evaluation of the specific facts and circumstances it views as applicable to a particular transaction. However, an assessment that an SPE is considered insolvency remote does not mean that an SPE is immune to the risk of insolvency or bankruptcy, as that risk can never be completely excluded. For the purposes of this article, the terms insolvency, insolvency-remote and insolvency remoteness are to be used interchangeably with the terms bankruptcy, bankruptcy-remote and bankruptcy remoteness, respectively.

20. To assess insolvency remoteness, S&P Global Ratings considers:
    - Restrictions on objects and powers;
    - Debt limitations;
    - Independent directors;
    - Restrictions on a merger or reorganization;
    - Limitations on amendments to organizational documents;
    - Separateness; and
    - Security interests over assets.
21. We believe each of these characteristics supports the overall concept of insolvency remoteness. Regardless of the specific organizational structure of an SPE (corporation, partnership, trust, etc.), where relevant, our analytic approach considers how and the extent to which these elements are addressed in the relevant organizational and/or transaction documents.
22. We explain the rationale for each characteristic in the sections below.

Restrictions on objects and powers

23. One SPE characteristic that we view as relevant to the analysis of insolvency remoteness is whether the entity's objects and powers are restricted to the activities necessary to effect the transaction. We believe that this element, if present, may help reduce the SPE's risk of insolvency by reducing the likelihood of claims created by activities unrelated to the securitized assets and the issuance of the rated securities.
24. We consider whether the transaction documents (to which the securityholders or their representative are party) or the SPE's constituting document of establishment (for example, articles/certificate of incorporation for corporations, deed of partnership/partnership agreement for partnerships, or declaration of trust for trusts) contain objects-and-powers provisions that constrain the SPE to those activities needed to carry out the transaction.
25. To the extent the SPE proposes to engage in unrelated business activities, the rating may be affected by our view of the effect of these activities on the SPE's resources, cash flows, and ability to pay interest and principal on the rated securities.

Debt limitations

26. A second SPE characteristic that we view as relevant to the analysis of insolvency remoteness is whether there are restrictions pertaining to an SPE's ability to incur indebtedness in addition to the rated debt. We believe that additional debt limitations, if present, may help to reduce the likelihood that the SPE will be forced into insolvency proceedings by its creditors.
27. When reviewing whether an SPE is restricted from incurring additional indebtedness, we may view certain types of additional debt as not necessarily affecting an SPE's insolvency remoteness. Examples include debt that:
    - Is subordinated to the existing rated debt;
    - Bears the same rating from S&P Global Ratings as the rating assigned to the existing rated debt (at the time of issuance and at all times thereafter); and
    - Is issued as a series that we view as being adequately segregated from the existing rated debt,

such that additional debtholders would not be expected to be successful in pursuing remedies against collateral securing the existing rated debt. In making this assessment, we apply the multiple-use criteria set out in paragraphs 44-47 below.

28. We also consider whether:

- There are agreements between the SPE and its creditors that include non-petition language pursuant to which the creditors agree not to initiate insolvency proceedings against the SPE and not to join any such proceedings;
- There are agreements between the SPE and its creditors that include limitation-of-recourse language pursuant to which the creditors agree that their recourse is limited to the assets backing the rated debt in accordance with the relevant order of priority set out in the documentation; and
- Fees, expenses, indemnities, and other performance obligations of the SPE incurred directly in connection with the underlying assets and the issue of the rated debt are adequately covered or subordinated to payments on the rated debt.

Independent director

29. A third SPE characteristic that we view as relevant to the analysis of insolvency remoteness is the presence of one or more independent directors (or independent voting entities for those SPE types that do not have boards of directors) appointed to the governing board of an SPE. We believe that this element, if present, may help to reduce the likelihood that the SPE may resolve to commence voluntary insolvency proceedings merely for the convenience of its parent or another transaction party.

30. For corporations, it is often the case that the directors are elected by the shareholders, the corporation's owners. In many jurisdictions, among the decisions that may be made by a board of directors is that to initiate voluntary insolvency proceedings. Depending on the jurisdiction, equityholders may also have the power to initiate voluntary insolvency proceedings for a corporation. In cases where a shareholder of the SPE has the power to voluntarily petition the SPE into bankruptcy proceedings, we may consider how the structure mitigates this risk. For example, we believe that the use of independent shareholding entities--the votes of which would be required along with the vote of a parent shareholder to commence voluntary insolvency proceedings--may help to mitigate this risk.

31. Regardless of an SPE's legal form, under this SPE characteristic, we assess what mitigants exist to reduce the likelihood that the SPE will initiate insolvency proceedings.

32. If a non-orphan SPE has directors or voting entities (where relevant) in common with or under the common control of its parent, there may be an incentive for the parent company to attempt to cause an SPE subsidiary to voluntarily file to initiate insolvency to seek to consolidate the assets of the SPE with those of its parent. However, if--as noted above--the SPE subsidiary has at least one director or voting entity (where relevant) who is independent from the parent, and this director's or voting entity's vote is required in any action seeking to initiate insolvency proceedings for the subsidiary, we believe that such SPEs may be less likely to commence voluntary insolvency proceedings.

Restrictions on merger or reorganization

33. A fourth SPE characteristic that we view as relevant to the analysis of insolvency remoteness is

whether the SPE is restricted from participating in a merger or reorganization type activity (including, where relevant, whether there are restrictions on the purchase by another company of the SPE's shares). We believe that this element, if present, may help reduce the concern that while the rated debt is outstanding, the insolvency-remote status of the SPE may be undermined by any merger or consolidation with a non-SPE, by any reorganization, dissolution, liquidation, or asset sale, or by the purchase by another company of the SPE's shares.

Limitations on amendments to organizational documents

34. An SPE's ability to amend its organizational documents is another characteristic we view as relevant to the analysis of insolvency remoteness. In particular, we assess whether the SPE is restricted from amending its organizational documents for as long as the rated debt is outstanding.

Separateness

35. We also consider the risk that the courts may use principles of "piercing the corporate veil," "alter ego," "substantive consolidation" ("consolidation"), or equivalent concepts that may exist in the relevant jurisdiction to bring the SPE and its assets into the insolvency proceeding of another entity (such as a parent).

36. Consolidation is a remedy that a court may exercise in some jurisdictions when a controlling entity, such as the parent of an SPE, disregards the separate identity of the SPE to such an extent that their enterprises are seen as effectively commingled. This remedy may be sought by creditors with claims against an insolvent parent in the belief that funds owed to such creditors can be properly traced into the subsidiary.

37. We may look to a nonconsolidation opinion to derive comfort regarding these risks when assessing insolvency remoteness. In other cases, however, we will review whether the SPE's organizational documents or transaction documents include covenants designed to provide comfort that the SPE will hold itself out as an independent entity.

38. Examples of separateness covenants that we have observed in securitization transactions include:

- To maintain books and records separate from any other person or entity;
- To maintain accounts separate from any other person or entity;
- To conduct its own business in its own name;
- To maintain separate financial statements;
- To observe all corporate or other formalities required by its organizational documents;
- Not to pledge its assets for the benefit of any other entity or make loans or advances to any other entity (except as provided in the transaction documents);
- To allocate fairly and reasonably any overhead for shared office space;
- To use separate stationery, invoices, and checks; and
- To hold itself out as a separate entity and to correct any known misunderstanding regarding its separate identity.

39. We've observed that the types of SPE separateness covenants that may appear in securitization transactions may vary depending on SPE type, whether it is an orphan SPE (an SPE whose shares

are not held by an operating company but rather are held on trust for charitable purposes), and the relevant jurisdiction involved.

Security interests over assets

40. Another SPE characteristic we view as relevant to the analysis of insolvency remoteness is whether an SPE has created/established a security interest over its assets in favor of (or which may ultimately benefit) the holders of the rated debt. We believe that this element, if present, could help reduce the practical benefits of--and, therefore, the incentives for--parties such as creditors of an equityholder or an unsecured third-party creditor of the SPE to file the issuer into insolvency proceedings to potentially gain access to the SPE's cash flows and assets. We also consider whether laws applicable to the SPE or certain structural features of the transaction provide comfort analogous to a security interest.

41. We believe reducing the incentive of such parties to attempt to gain access to the SPE's assets and cash flows may reduce the risk of an involuntary insolvency proceeding for the SPE.

42. Given that insolvency remoteness is a matter of opinion and not a fact, the presence or absence of any of the above characteristics is not, on its own, determinative of a specific analytic view by S&P Global Ratings. For example, the analysis to assess whether an orphan SPE can be considered insolvency remote may differ significantly from an assessment of an SPE whose shares are held by an operating parent as part of a larger complex group of companies.

43. We also recognize (and may factor into our analysis) that local laws may provide comfort on certain of the above characteristics and/or provide that certain entities are insolvency-remote as a matter of law without regard to these specific characteristics. In certain jurisdictions or regions (including, but not limited to, those discussed in the appendixes) our assessment of insolvency remoteness may be subject to other considerations to reflect local laws and practices.

Multiple-Use Criteria

44. Under the SPE characteristic 'debt limitations' discussed in the "Insolvency-Remoteness Of SPEs" section above, S&P Global Ratings considers whether the SPE is restricted from incurring additional indebtedness. We may view certain types of additional debt as not necessarily affecting an SPE's insolvency remoteness, including, for example, debt that is issued as a series that we view as being adequately segregated from existing rated debt. For example, an originator of receivables may wish to use the same SPE to issue various series of term debt obligations, collateralized by different pools of receivables. Such an SPE is commonly referred to as a "multiple-use SPE."

45. We've developed the following criteria for these types of transactions, which we believe supports insolvency remoteness for multiple-use SPEs such that multiple series of debt issued by a multiple-use SPE and collateralized by discrete pools of assets may carry de-linked ratings (or be unrated). In analyzing these types of transactions, our analysis generally considers the extent to which:

- The issuer is structured to be an insolvency-remote SPE;
- The issuer issues separate series of debt obligations;
- Assets relating to any particular series, including any related proceeds, are to be held separate and apart from assets relating to any other series;
- A multiple-use SPE's obligations--including fees, expenses, and any enforcement

expenses--are structured to be on a series-by-series basis;

- Any swap transaction entered into by a multiple-use SPE for a series is structured to be separate from any other swap transaction for any other series;
- A security interest is created over the assets specific to each series in favor of the series noteholders and series creditors;
- The series are not cross-collateralized or cross-defaulted;
- Each series of notes includes limited-recourse provisions specifying that each series has recourse only to the assets charged to that series, is nonrecourse to the other assets of the SPE, and does not constitute a claim against the SPE if the cash flow from the series-designated charged assets is insufficient to repay the debt in full;
- The noteholders, all transaction participants, and any series creditors have agreed not to file, or join in any filing of, a bankruptcy, or insolvency petition against the SPE; and
- For each series, the trustee (or equivalent) is entitled to exercise remedies on behalf of the noteholders.

46. S&P Global Ratings requests to be notified of each issuance by a multiple-use SPE of a new series of debt or other equity interest in the assets of the SPE prior to the issuance of the series, whether rated or unrated, so that it can consider the extent to which the issuance addresses the insolvency remoteness criteria and multiple-use criteria and to provide ratings confirmation for the outstanding rated series.

47. Our ratings on issues from a multiple-use SPE on a de-linked basis reflects our assessment that we view the additional debt issued as a series as not inconsistent with our insolvency-remoteness criteria.

Insolvency Remoteness Of Pre-Existing Entities

48. For S&P Global Ratings to view as insolvency-remote any pre-existing entity that (i) was not originally formed as an SPE but has been recycled into an SPE or (ii) was formed and has existed for some time as an SPE prior to our consideration of whether it is insolvency-remote, we generally consider whether the entity--in addition to satisfying our insolvency remoteness criteria set forth herein--has no, or has removed or mitigated, prior liabilities as of the transaction's closing date. We generally obtain comfort that an entity's prior liabilities, if any, have been removed or mitigated through certification by an officer or other person with sufficient knowledge of the entity's activities or a legal opinion to that effect. Representations we typically observe in certificates regarding prior conduct include:

- The entity has no judgments or liens of any nature against it;
- The entity is in compliance with all laws, regulations, and orders applicable to it and has received all permits necessary for it to operate;
- The entity is not aware of any pending or threatened litigation; and
- The entity has paid all taxes and is not involved in any dispute with any taxing authority.

49. In connection with S&P Global Ratings' assessment of the insolvency remoteness of a pre-existing entity, we also generally consider the nature of the entity's activities prior to its use in the transaction we are reviewing. Depending on the nature of those activities, we may seek legal comfort more specifically tailored to such activities. For example, with respect to entities that

previously held real property, we may consider the presence of environmental liabilities.

Related Legal Issues

50. During our assessment of asset isolation and insolvency remoteness of SPEs, we may identify related legal issues that could affect our assessment. The sections below discuss some of these legal issues.

Clawback risk

51. Clawback risk is a term generally used to describe the risk that a transfer of funds or other assets, or entry into certain transactions, that occurred within a specified period preceding insolvency (sometimes referred to as a look-back period or suspect period) would be susceptible to the risk of being reversed or declared void post-insolvency. In the context of a securitization, clawback risk may be applicable if, for example, the originator enters insolvency proceedings and a challenge is raised by an insolvency officer or creditor of the originator seeking to unwind the transfers of securitized assets made by an originator prior to its insolvency.

52. Among jurisdictions that have clawback rules, the terminology used and the factual circumstances that trigger the applicable clawback rules can vary. For example, variants can include fraudulent conveyance, preference, transfers at an undervalue, non-arms-length transactions, and bad-faith transactions.

53. The question as to whether all of the required elements necessary to succeed under the applicable clawback rules are present for the transfer being challenged is typically a qualitative/fact-based analysis that will be judged by a court with the benefit of hindsight at the time of the challenge. Some jurisdictions' clawback regimes also provide specific safe harbors or defenses for certain types of transactions (those types that may not be successfully challenged). Although laws vary, examples of such safe harbors or defenses may include transactions in the ordinary course of business, transactions that occurred at a time when a bankrupt entity was solvent, or transactions that occurred well before a bankruptcy filing. When deemed relevant, we consider how a transaction has been structured to address potential clawback risk.

Set-off risk

54. S&P Global Ratings' rating analysis considers whether a transaction's structure addresses potential set-off risk. Set-off risk is the risk that amounts owed by a borrower to a creditor will be reduced by amounts owed by the creditor to the same borrower (the obligations will be netted against each other). In securitization, for example, there may be set-off risk on a pool of loans if the loan originator provides deposit accounts to the borrowers. If the borrowers seek to set off amounts owed to the loan originator against amounts owed by the originator, reduced or delayed payments on the securitized debt may result. The potential for set-off risk may increase as the number and scope of the relationships between the parties increase.

Tax risk

55. S&P Global Ratings' rating analysis considers the extent to which a transaction's structure addresses potential tax risk. In a securitization, tax risk is the risk that a liability to pay tax may affect an SPE's resources, cash flows, and the ability to pay interest and principal on the rated debt. By way of example, taxes that may affect a structured finance transaction can include

entity-level taxes (as defined below) and taxes withheld from cash flows received by the SPE that are designated to service the rated securities.

56. In a securitization, entity-level taxes are taxes that apply to the SPE itself, such as income taxes. SPEs typically fall into two categories: taxable and nontaxable. Nontaxable SPEs are typically located in jurisdictions where they are either not subject to tax or subject to income tax at a zero rate. Taxable SPEs are typically located in jurisdictions where they are subject to income tax at more than a nominal rate. In the case of taxable SPEs, given the economic incentives for sponsors to set up tax-efficient structures, we've observed that sponsors have typically either (1) used SPEs that are transparent for tax purposes (meaning their equity owners pay tax on the SPE's income), or (2) structured the cash flows of the SPE such that the expected net taxable income of the SPE (after having deducted expenses, including interest expense) is zero or minimal. Accordingly, in our analysis of most securitizations, we have observed that the participants typically have structured transactions in such a way that the SPE will not bear any material tax liability.

57. In a securitization, withholding taxes are taxes that may apply to cash flows to be received or paid by the SPE. Whenever funds are transferred across a jurisdictional border, there is a risk that the tax authority in the jurisdiction from which moneys are paid will require part of that amount to be remitted to it in the form of withholding tax. In our analysis, we consider whether withholding tax may be imposed on the cash flows to be received or paid by the SPE that may affect the SPE's ability to pay debt service on the rated debt. S&P Global Ratings' structured finance rating analysis doesn't address the applicability of withholding taxes on payments made by an SPE to holders of rated debt because such an analysis would be dependent on the facts and circumstances specific to each individual noteholder.

Challenges To Securitization Transactions

58. It's not possible to exclude fully the risk that a securitization structure may be challenged. This may occur, for example, if a creditor or bankruptcy officer of an insolvent originator seeks to challenge the legal isolation of the transferred assets or seeks to subject an SPE to insolvency or bankruptcy proceedings. This is not a comment on the quality or type of structuring involved in securitization but rather a recognition that in certain circumstances, a third party might seek to challenge or question the efficacy of the securitization structure--as they could any other financial transaction. A rating assigned by S&P Global Ratings to a securitization debt issue does not assess the risks (including potential timing delays) that could arise simply upon a third party (such as a creditor or insolvency officer of the originator) seeking to challenge certain legal aspects of the structure.

Comfort On Legal Issues

59. An S&P Global Ratings structured finance rating is a forward-looking credit opinion that is based on, among other things, the information and documentation provided by the transaction participants, their legal counsel, and other advisors. In applying our criteria for assessing legal risks in structured finance transactions, we assess various legal risks we believe are relevant to our analysis of creditworthiness based on factors including (but not limited to) the review of information, documentation, and/or legal opinions we view as relevant for the particular rating. S&P Global Ratings' assessment of legal issues considered relevant may be informed by its general understanding of the relevant legal issues in a given jurisdiction. We note that legal opinions supporting securitization transactions are views expressed by a lawyer or law firm and are not statements of a conclusive outcome. Legal opinions typically rely on factual assumptions and are limited by qualifications. With legal issues, there always remains the risk that courts or

other governmental authorities may interpret or apply the relevant law in a manner inconsistent with our assessment of legal risks through the application of our criteria.

APPENDIXES: JURISDICTIONAL SUPPLEMENTS

Appendix A: Australia And New Zealand

60. In Australia and New Zealand, S&P Global Ratings will apply the global criteria, subject to the following considerations.

Insolvency remoteness of SPEs

61. Further to the discussion of insolvency remoteness of SPEs in the "Insolvency-Remoteness Of SPEs section" above, in Australian and New Zealand securitization transactions, several types of SPEs are typically used by transaction parties, including orphan companies, subsidiary companies (in limited circumstances), and trusts. The most widely used form of SPE in Australian and New Zealand securitization transactions is a trust.

62. The following considerations are taken into account in the assessment of the insolvency remoteness of SPEs used in Australian and New Zealand securitization transactions.

Independent director

63. The global criteria discuss the concern related to the commencement of voluntary insolvency proceedings by a board of directors of an SPE and the view that the presence of independent directors could reduce the likelihood of an SPE's board of directors seeking to commence voluntary insolvency proceedings.

64. In Australia and New Zealand, we believe that a similar degree of comfort can also be obtained by a security interest over all of the assets of the SPE combined with other factors such as an orphan SPE or a security interest over all the shares in the SPE.

Separateness

65. The global criteria discuss the concern that the courts may use principles of "piercing the corporate veil," "alter ego," "substantive consolidation," or equivalent concepts to bring the SPE and its assets into the insolvency proceeding of another entity (such as a parent). They also discuss how, in assessing this risk, we may look to a nonconsolidation opinion and/or separateness covenants for comfort as to the separateness of an SPE. In our view, the primary concern on separateness in Australia and New Zealand relates not to consolidation with the transferor but rather to the potential early termination of the trust.

66. Because an Australian and New Zealand trust SPE is not a separate legal entity but is rather a trust relationship established by an issuer trustee under common law, it can't technically be insolvent. An issuer trustee may itself become insolvent, but its insolvency should not trigger acceleration and enforcement of security in respect of a securitization transaction because the trust assets will be isolated from the trustee's other assets and will not be available for general creditors. Accordingly, we typically see trust deeds in Australia and New Zealand provide for prompt replacement of the issuer trustee and all trust assets to immediately vest in the new trustee.

67. For Australian and New Zealand trust SPEs, we may also look to a nonconsolidation opinion and/or separateness covenants for comfort if we view the transaction structure as raising particular issues regarding separateness.

Appendix B: Canada

68. In Canada, S&P Global Ratings will apply the global criteria, subject to the following considerations.

Insolvency remoteness of SPEs

69. Further to the discussion of insolvency remoteness of SPEs in the "Insolvency-Remoteness Of SPEs" section above, the most widely used form of SPE in Canadian securitization transactions is a trust. Although less prevalent, limited partnership SPEs and corporate entities are also used on occasion.

70. We take into account the following considerations in the assessment of the insolvency remoteness of trust SPEs and limited partnership SPEs used in Canadian securitization transactions.

Independent director

71. The global criteria discuss the concern related to the commencement of voluntary insolvency proceedings by a board of directors of an SPE and the view that the presence of independent directors could reduce the likelihood of an SPE's board of directors seeking to commence voluntary insolvency proceedings. Canadian trust SPEs and limited partnership SPEs don't have boards of directors.

72. For Canadian trust SPEs, S&P Global Ratings instead considers whether the issuer trustee carries on business as an independent trust company and the extent to which the related declaration of trust restricts the ability of the issuer trustee to voluntarily terminate the SPE while there are any rated securities outstanding.

73. For Canadian limited partnership SPEs, we instead consider the extent to which at least one general partner is constituted as an SPE and, if so, whether that general partner was established in a manner consistent with the global criteria. Also, if there is more than one general partner, we consider the extent to which the limited partnership agreement provides that the partnership will continue (and not dissolve) as long as one solvent general partner exists.

74. For Canadian limited partnership SPEs, S&P Global Ratings also considers the extent to which the consent of the SPE general partner is required by the partnership agreement (i) to file, consent to the filing of, or join in any filing of, a bankruptcy or insolvency petition, or otherwise institute insolvency proceedings for the limited partnership SPE; (ii) to dissolve, liquidate, consolidate, merge or sell all or substantially all of the assets of the limited partnership; (iii) for the partnership SPE to engage in any other business activity; and (iv) to amend the limited partnership agreement

Separateness

75. The global criteria discuss the concern that the courts may use principles of "piercing the corporate veil," "alter ego," "substantive consolidation," or equivalent concepts to bring the SPE and its assets into the insolvency proceeding of another entity (such as a parent). The global criteria discuss how, in assessing this risk, we may look to a nonconsolidation opinion and/or

separateness covenants for comfort as to the separateness of an SPE.

76. A Canadian trust SPE is not a separate legal entity but is rather a trust relationship established by an issuer trustee. In some Canadian securitization transactions, the transferor will be appointed by the issuer trustee to act as its administrative agent in respect of the SPE and, as a result, be delegated authority to carry out the non-fiduciary administrative activities of the SPE. However, such authority is typically made subject to the issuer trustee's ultimate control over the administrative agent and the SPE's property and activities. As a result, a typical Canadian trust SPE, by its nature, is generally not related to the transferor.

77. Accordingly for a typical Canadian SPE trust, in our view the primary concern on separateness relates not to consolidation with the transferor but rather to the potential early termination of the trust either (i) by the issuer trustee or (ii) by the trust's beneficiaries under the common law rule established in Saunders v. Vautier. As to (i), see the comment in Paragraph 71 above.

78. The common law rule from Saunders v. Vautier is that all the beneficiaries of a trust may, provided they have the requisite legal capacity, unanimously agree to terminate the trust notwithstanding the terms specified by the trust documents. We understand that the risk created by the Saunders v. Vautier rule may be reduced if an SPE's declaration of trust specifies that the beneficiary will be one of a number of potential beneficiaries falling within a specified category, as selected by the issuer trustee.

79. For Canadian trust SPEs, S&P Global Ratings considers whether the declaration of trust addresses the Saunders v. Vautier risk by specifying the trust's beneficiaries as being one of a number of potential beneficiaries falling within a specified category as selected by the issuer trustee. An example would be one or more members of a charitable organization recognized under the Income Tax Act (Canada).

80. For Canadian trust SPEs, S&P Global Ratings may also look to a nonconsolidation opinion and/or separateness covenants for comfort if S&P Global Ratings views the transaction structure as raising particular issues regarding separateness.

81. For Canadian limited partnership SPEs, we consider the extent to which non-consolidation opinions are provided that provide comfort that upon the insolvency of one of the partners of the limited partnership SPE, neither the limited partnership SPE nor its assets would be consolidated with the insolvent partner.

Appendix C: Europe

82. In Europe, S&P Global Ratings will apply the global criteria, subject to the following considerations.

Asset isolation

83. The global criteria note that certain jurisdictions have legislated securitization regimes that may delineate the conditions and formalities under which a transfer of eligible assets can take place in order to achieve a true sale. For example, some continental European jurisdictions have adopted securitization statutes that dispense with the need to formally notify debtors of the sale of receivables to an SPE to render the sale effective against the debtors, other third parties, or an insolvency officer of the seller.

Insolvency remoteness of SPEs

84. Further to the discussion of insolvency remoteness of SPEs in the "Insolvency-Remoteness Of SPEs" section above, in European securitizations, SPEs take different forms. For example, SPEs may be established as private or public limited companies (the shares of which are often held by a corporate services provider on trust for charitable purposes) or--less commonly--as limited liability partnerships, trusts, or funds.

Limitations on amendments to organizational documents

85. Further to the discussion of limitations on amendments to organizational documents in the "Insolvency-Remoteness Of SPEs" section above, we observe that in Europe, the restriction of an SPE's ability to amend its organizational documents is usually achieved by express limitations set out in the SPE's constitutional documents or through the use of independent shareholding entities ("golden share"), the votes of which would be required to amend its organizational documents.

Appendix D: Japan

86. In Japan, S&P Global Ratings will apply the global criteria, subject to the following considerations.

Insolvency remoteness of SPEs

87. Further to the discussion of insolvency remoteness of SPEs in the "Insolvency-Remoteness Of SPEs" section above, Japanese securitization transactions typically use several types of SPEs, including: stock companies ("kabushiki kaisha"; KK), limited liability companies ("godo kaisha"; GK), limited liability companies established for securitization purposes ("tokutei mokuteki kaisha"; TMK), general incorporated associations ("ippan shadan hojin"; ISH), trusts ("shintaku"), and Tokyo branches of overseas SPEs, including Cayman special purpose companies (Cayman SPC) and Delaware limited liability companies. The stock or equities of an issuer KK, GK, or TMK may be held by an ISH or Cayman SPC whose ordinary shares are held by, for example, a charitable trust. In this way, the issuer may be treated as an orphaned SPE, in line with the global criteria.

88. We take into account the following considerations in the assessment of the insolvency remoteness of SPEs used in Japanese securitization transactions.

89. The global criteria note that with respect to certain asset classes in certain jurisdictions, our analytical approach considers the extent to which certain asset-level entities are consistent with the global insolvency-remoteness criteria. In Japan, borrower-level SPEs in commercial mortgage-backed securities (CMBS) are generally assessed in line with U.S. CMBS criteria (see "Assessing Borrower-Level Special-Purpose Entities In U.S. CMBS Pools: Methodology and Assumptions."

90. Japan's Trust Law makes it clear that trust assets do not form part of a trustee's bankruptcy estate and provides for the court appointment of a trust property administrator ("shintakuzaisan kanrisha") if required. In assessing insolvency remoteness of Japanese trust SPEs, S&P Global Ratings therefore considers the extent to which the transaction documentation contain elements that mitigate the risk of a trust's termination during the life of a transaction. If an asset-backed loan (ABL) is advanced to the trust SPE, it is also important to consider the effectiveness of priority between the ABL and the trust's beneficial interests, as well as any incentive for the ABL lender to file a petition to commence an insolvency proceeding with respect to the entrusted assets.

91. Because there is some doubt as to whether limited-recourse clauses will be effective in an obligor's insolvency proceedings in Japan, and there is an argument that a Japanese court may accept a petition made contrary to a non-petition undertaking, we consider the extent to which transaction parties in Japanese securitizations take further measures to reduce the incentive for creditors and other specified parties to file for insolvency, including security in favor of investors and subordination agreements that prioritize payments to investors.

KEY CHANGES

Expansion of scope to include Cayman Islands SPEs

We expanded the scope of the asset isolation and special-purpose entity methodology (AISPEM) by removing the former paragraph 7, which carved out the assessment of insolvency remoteness of Cayman Islands SPEs from the scope of the AISPEM. This reflects that going forward, we will apply the AISPEM rather than the now-archived Cayman criteria in assessing the insolvency remoteness of Cayman Islands SPEs used in structured finance transactions. Accordingly, this article supersedes the Cayman criteria.

The application of the AISPEM in assessing the insolvency-remoteness of Cayman Islands SPEs constitutes a material change in one significant respect: The now-superseded Cayman criteria don't consider the presence of independent directors as a characteristic relevant to the analysis of insolvency remoteness of Cayman Islands SPEs. Under the criteria in this article, the presence of one or more independent directors is viewed as a relevant characteristic in the analysis of insolvency remoteness of Cayman Islands SPEs.

Overview and scope

We also clarified the circumstances under which aspects of the AISPEM may apply in conjunction with the "U.S. Structured Finance Asset Isolation And Special-Purpose Entity Criteria" (the U.S. legal criteria) to U.S. structured finance transactions. These could include, for example, U.S structured finance transactions involving Cayman Islands SPEs.

In addition, we clarified the circumstances in which aspects of the U.S. legal criteria may apply in conjunction with the AISPEM to non-U.S. structured finance transactions. We also made related changes to the "Overview And Scope" section of the U.S. legal criteria to clarify the circumstances under which aspects of those criteria may apply to non-U.S. structured finance transactions and when aspects of the AISPEM may apply to U.S. structured finance transactions.

Independent directors

We clarified the relevance of independent directors to the assessment of an SPE's insolvency remoteness.

Insolvency remoteness of pre-existing entities

In addition, we clarified how the insolvency remoteness of pre-existing entities is assessed under the AISPEM.

IMPACT ON OUTSTANDING RATINGS

The new version of these criteria include a material change to the methodology regarding the relevance of independent directors in assessing the insolvency remoteness of Cayman Islands SPEs. However, we've reviewed outstanding structured finance transactions involving Cayman Islands SPEs and concluded that our ratings on those transactions are unaffected.

REVISIONS AND UPDATES

We republished this criteria article on May 29, 2025, to expand the scope to include the assessment of the insolvency remoteness of Cayman Islands SPEs used in structured finance transactions globally, which had previously been covered by a separate criteria article. We also clarified the circumstances in which this criteria article may apply to U.S. structured finance transactions and in which U.S. legal criteria may apply to non-U.S. structured finance transactions. We also clarified aspects of the relevance of independent directors to the assessment of insolvency remoteness of SPEs and addressed how the insolvency remoteness of pre-existing entities is assessed. These criteria now constitute S&P Global Ratings' global framework for assessing non-U.S. legal risks in relation to asset isolation and the insolvency remoteness of SPEs in structured finance transactions. This follows our "Request For Comment: Asset Isolation And Special-Purpose Entity Methodology."

The authors would like to acknowledge Justin Nuttall's contributions to this article.

Related Publications

Criteria To Be Superseded

- Asset Isolation And Special-Purpose Entity Methodology
- Structured Finance Criteria Introduced For Cayman Islands Special-Purpose Entities

Related Criteria

- U.S. Structured Finance Asset Isolation And Special-Purpose Entity Criteria
- Methodology For Analyzing Loan-Level Limited Purpose Entities In European CMBS
- Global Framework For Payment Structure And Cash Flow Analysis Of Structured Finance Securities
- Assessing Borrower-Level Special-Purpose Entities In U.S. CMBS Pools: Methodology and Assumptions
- Principles Of Credit Ratings

This article is a Criteria article. Criteria are the published analytic framework for determining Credit Ratings. Criteria include fundamental factors, analytical principles, methodologies, and /or key assumptions that we use in the ratings process to produce our Credit Ratings. Criteria, like our Credit Ratings, are forward-looking in nature. Criteria are intended to help users of our Credit Ratings understand how S&P Global Ratings analysts generally approach the analysis of Issuers

or Issues in a given sector. Criteria include those material methodological elements identified by S&P Global Ratings as being relevant to credit analysis. However, S&P Global Ratings recognizes that there are many unique factors / facts and circumstances that may potentially apply to the analysis of a given Issuer or Issue. Accordingly, S&P Global Ratings Criteria is not designed to provide an exhaustive list of all factors applied in our rating analyses. Analysts exercise analytic judgement in the application of Criteria through the Rating Committee process to arrive at rating determinations.

This report does not constitute a rating action.

Copyright © 2025 by Standard & Poor's Financial Services LLC. All rights reserved.

No content (including ratings, credit-related analyses and data, valuations, model, software or other application or output therefrom) or any part thereof (Content) may be modified, reverse engineered, reproduced or distributed in any form by any means, or stored in a database or retrieval system, without the prior written permission of Standard & Poor's Financial Services LLC or its affiliates (collectively, S&P). The Content shall not be used for any unlawful or unauthorized purposes. S&P and any third-party providers, as well as their directors, officers, shareholders, employees or agents (collectively S&P Parties) do not guarantee the accuracy, completeness, timeliness or availability of the Content. S&P Parties are not responsible for any errors or omissions (negligent or otherwise), regardless of the cause, for the results obtained from the use of the Content, or for the security or maintenance of any data input by the user. The Content is provided on an "as is" basis. S&P PARTIES DISCLAIM ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, FREEDOM FROM BUGS, SOFTWARE ERRORS OR DEFECTS, THAT THE CONTENT'S FUNCTIONING WILL BE UNINTERRUPTED OR THAT THE CONTENT WILL OPERATE WITH ANY SOFTWARE OR HARDWARE CONFIGURATION. In no event shall S&P Parties be liable to any party for any direct, indirect, incidental, exemplary, compensatory, punitive, special or consequential damages, costs, expenses, legal fees, or losses (including, without limitation, lost income or lost profits and opportunity costs or losses caused by negligence) in connection with any use of the Content even if advised of the possibility of such damages.

Some of the Content may have been created with the assistance of an artificial intelligence (AI) tool. Published Content created or processed using AI is composed, reviewed, edited, and approved by S&P personnel.

Credit-related and other analyses, including ratings, and statements in the Content are statements of opinion as of the date they are expressed and not statements of fact. S&P's opinions, analyses and rating acknowledgment decisions (described below) are not recommendations to purchase, hold, or sell any securities or to make any investment decisions, and do not address the suitability of any security. S&P assumes no obligation to update the Content following publication in any form or format. The Content should not be relied on and is not a substitute for the skill, judgment and experience of the user, its management, employees, advisors and/or clients when making investment and other business decisions. S&P does not act as a fiduciary or an investment advisor except where registered as such. While S&P has obtained information from sources it believes to be reliable, S&P does not perform an audit and undertakes no duty of due diligence or independent verification of any information it receives. Rating-related publications may be published for a variety of reasons that are not necessarily dependent on action by rating committees, including, but not limited to, the publication of a periodic update on a credit rating and related analyses.

To the extent that regulatory authorities allow a rating agency to acknowledge in one jurisdiction a rating issued in another jurisdiction for certain regulatory purposes, S&P reserves the right to assign, withdraw or suspend such acknowledgment at any time and in its sole discretion. S&P Parties disclaim any duty whatsoever arising out of the assignment, withdrawal or suspension of an acknowledgment as well as any liability for any damage alleged to have been suffered on account thereof.

S&P keeps certain activities of its business units separate from each other in order to preserve the independence and objectivity of their respective activities. As a result, certain business units of S&P may have information that is not available to other S&P business units. S&P has established policies and procedures to maintain the confidentiality of certain non-public information received in connection with each analytical process.

S&P may receive compensation for its ratings and certain analyses, normally from issuers or underwriters of securities or from obligors. S&P reserves the right to disseminate its opinions and analyses. S&P's public ratings and analyses are made available on its Web sites, www.spglobal.com/ratings (free of charge), and www.ratingsdirect.com (subscription), and may be distributed through other means, including via S&P publications and third-party redistributors. Additional information about our ratings fees is available at www.spglobal.com/usratingsfees.

STANDARD & POOR'S, S&P and RATINGSDIRECT are registered trademarks of Standard & Poor's Financial Services LLC.