

**STANDARD & POOR'S INTRODUCES SPECIFIC CRITERIA FOR SPECIAL
PURPOSE ENTITIES INCORPORATED IN THE CAYMAN ISLANDS**

We attach a copy of a Standard & Poor's report published today relating to the legal criteria for structured finance transactions for Cayman Islands incorporated special purpose entities.

The Capital Markets department of Maples and Calder has been actively involved with Standard & Poor's in relation to the development of the new criteria which largely reflect current market practice and will provide a useful checklist for new transactions.

If you have any questions or require any further information in relation to the report or any other capital markets issue, please refer to your usual contact.

IN CAYMAN

Andrew Moon
(345) 814 5334
andrew.moon@maplesandcalder.com

Graham Lockington
(345) 814 5329
graham.lockington@maplesandcalder.com

Rebecca Steller
(345) 814 5333
rebecca.steller@maplesandcalder.com

IN EUROPE

Anthony Travers
(020) 7466 1600
anthony.travers@maplesandcalder.com

Margaret Boswell
(020) 7466 1600
margaret.boswell@maplesandcalder.com

Shaun Denton
(020) 7466 1600
shaun.denton@maplesandcalder.com

IN ASIA

Christine Chang
(852) 2971 3002
christine.chang@maplesandcalder.com

Linda Martin
(852) 2971 3043
linda.martin@maplesandcalder.com

MAPLES AND CALDER RANKED NUMBER 1 AS ISSUER'S COUNSEL IN 2001

Maples and Calder was the leading Issuer's counsel for debt issuance in 2001. Publicly available information records that Maples and Calder acted on 899 deals in the twelve month period from January to December, 2001.

The capital markets department is one of the largest and longest established practices in any offshore financial centre and advises on the structuring and implementation of a broad range of financing transactions for Cayman vehicles, whether on or off-balance sheet. The practice has grown in size and sophistication in accordance with the market and is involved in all forms of debt and equity issuances and debt and equity related products including note programmes, preference share financings, commercial paper and depositary receipt programmes, convertible debt and warrant issues and the whole spectrum of structured finance transactions including securitisations, repackagings and collateralised bond, debt and loan offerings.

The department has also provided opinions on netting, set-off, security, insolvency and related matters to the major industry bodies involved in the preparation of standard form documentation for swaps, options, foreign exchange transactions and repurchase and stock lending transactions.

As Cayman Islands counsel we have been instrumental in the development of the growing number of conduit vehicles, such as structured investment vehicles, the majority of which have been established in the Cayman Islands due to its favourable operating environment.

The capital markets department advises solely in relation to Cayman Islands law and comprises over 30 lawyers who operate from offices located in the Cayman Islands, Hong Kong and London. We provide a depth of experience and technical excellence combined with a commercial approach to handle all types of capital markets transactions, however large, complex or innovative.

Publication Date: July 18, 2002

Structured Finance Criteria Introduced for Cayman Islands Special-Purpose Entities

Michael K Vernier, Esq., New York (1) 212-438-6629; Petrina R Dawson, Esq., New York (1) 212-438-6603; Ian Bell, Esq., London (44) 20-7826-3828

Cayman Islands insolvency and corporate law differs from that of other jurisdictions in some significant respects that are relevant to Standard & Poor's analysis of special-purpose entities (SPEs). As these SPEs are a fundamental component of structured finance transactions, Standard & Poor's has introduced legal criteria that specifically address SPEs incorporated in the Cayman Islands. In the main, these criteria are identical to the general SPE criteria set out in Legal Criteria for Structured Finance Transactions, April 2002. (See www.standardandpoors.com; under Resource Center, select Ratings Criteria, then Structured Finance.) Nevertheless, they differ in a few instances, particularly as to the location of various restrictions on activities and the absence, if certain conditions are met, of a requirement for independent directors and its replacement with a requirement for certain restrictions on the power of the shareholders of the SPE to liquidate the SPE and to amend its constitutional documents.

Standard & Poor's legal criteria for structured finance transactions are designed to ensure that either the entity owning the assets that fund payments on the rated securities is insolvency-remote (that is, unlikely to be subject to voluntary or involuntary insolvency proceedings) or the transaction is properly accounted for as a dependent rating. In this regard, Standard & Poor's will evaluate the incentives of the SPE, or its equity holders, to resort to voluntary insolvency proceedings, and the incentives of creditors of the SPE to resort to involuntary insolvency proceedings. In cases where the SPE is not an "orphan" SPE (see below) the insolvency-remote analysis also examines whether third-party creditors of the SPE's parent would have an incentive to reach the assets of the SPE to satisfy the parent's obligations.

Cayman Islands Insolvency Law

Fundamentally, the SPE criteria focus on matters of insolvency. Therefore, it is always crucial, when examining this issue, to focus on which insolvency regime (or regimes) would govern a bankruptcy of the SPE. Accordingly, the Cayman Islands criteria may not be suitable for a company incorporated in the Cayman Islands if the nature of its activities or the location of its assets suggests that an insolvency regime other than that set out in the Companies Law (2002 Revision) of the Cayman Islands would apply to it or the majority of its assets.

The Cayman Islands criteria set out below may also not be suitable for an exempted company incorporated under the Companies Law (2002 Revision) that is registered as a segregated portfolio company. Special insolvency rules in the Companies Law (2002 Revision) apply to these companies, which raise particular issues in the context of rated transactions.

Under the Companies Law (2002 Revision) there is no formal corporate rehabilitation procedure as in England and Wales (administration) or in the United States (Chapter 11) that would give the issuer the benefit of moratorium provisions in the payment of its debts, including certain secured debts. A Cayman Islands company is subject to voluntary or involuntary winding up proceedings under the Companies Law (2002 Revision) although it is possible for a court to appoint a provisional liquidator after the presentation of a petition for the winding up of an SPE but before an order for the winding up of a company is made where, for example, there is an immediate need to take actions to safeguard assets for creditors.

There is a growing practice in the Cayman Islands for provisional liquidators to be appointed with the principal objective of preparing a scheme of arrangement with the aim of avoiding a formal winding up. Although there is an automatic stay of proceedings when an order for winding up has been made and there is a discretionary stay on the appointment of a provisional liquidator, Standard & Poor's understands that the stay does not prevent a secured creditor from enforcing its security.

Characteristics of Insolvency Remoteness

For companies incorporated in the Cayman Islands, Standard & Poor's has compiled the following "Cayman Islands criteria" which an entity should satisfy to be deemed an insolvency-remote SPE. Standard & Poor's regards an entity that satisfies these criteria as being sufficiently protected against both voluntary and involuntary insolvency risks:

- Contractual restrictions on activities,
- Contractual debt limitations,
- Contractual limitations on reorganizations or changes of ownership,
- Contractual separateness covenants,
- Fixed security interests over assets, and
- Restrictions on the power of the shareholders to wind up the SPE voluntarily and to make amendments to the memorandum and articles of association of the SPE.

Each of these characteristics is important to the overall concept of insolvency remoteness. Regardless of the specific organizational structure of the SPE, these elements should, generally, be addressed in the transaction documents. Their rationale, briefly explained below, is followed by a full description of the Cayman Islands SPE criteria.

Contractual Restrictions on Activities

The fundamental SPE characteristic is that the entity be restricted as closely as possible to the bare activities necessary to effect the transaction. The purpose of this restriction is to reduce the SPE's risk of insolvency due to claims created by activities unrelated to the securitized assets and the issuance of the rated securities.

To the extent that Standard & Poor's analysis relies upon the insolvency remoteness of an entity, it will generally require that the transaction documents incorporate explicit covenants that constrain the SPE to those activities needed to ensure the sufficiency of cash flow to pay the rated securities.

In brief, the SPE should not engage in unrelated business activities unless the parties to a transaction are willing to allow the rating to reflect the effect of these activities on the entity's resources, cash flows, and the ability to pay the entity's obligations in a full and timely manner.

In its general SPE criteria, Standard & Poor's has indicated that the organizational documents usually are the preferred location for this constraint because, first, locating the restrictions on business activities in the organizational documents provides a basis in certain jurisdictions for proceedings to constrain the SPE's actions; second, the documents are publicly available; and, finally, such restrictions are less likely to become lost in the corporate files and are more likely to remind the directors to act in accordance with the restrictions. These considerations, however, are not wholly applicable under Cayman Islands law.

The *ultra vires* rule under Cayman Islands law is very limited. Actions by an issuer in breach of a restriction in its objects would still be effective. The only persons who may rely on the absence of capacity or power are, first, shareholders or directors of the issuer who may take steps prior to any proposed *ultra vires* action to restrain the issuer and, second, the issuer itself, which may take proceedings against the directors for any loss arising from their unauthorized action. If the directors, however, are connected with the shareholder(s), there may be no particular incentive for the shareholder(s) to act in these circumstances. Furthermore, the memorandum and articles of association of a Cayman Islands issuer are not public documents and, consequently, the constraints ordinarily would not be publicly known.

On balance, Standard & Poor's view is that the insertion of such restrictions in the organizational documents of SPEs incorporated in the Cayman Islands is not required and that it is sufficient if such restrictions are included in the appropriate transaction documents.

Debt Limitations

An SPE should be restricted from incurring additional indebtedness except in cases where such indebtedness would not affect the rating on its existing indebtedness. An existing rating could be affected if holders of the additional indebtedness have an incentive to initiate insolvency proceedings in order to gain access to the SPE's cash flows and assets. Therefore, additional indebtedness that is either expressly subordinated to, or rated the same as, existing indebtedness should not, in principle, affect the rating of the existing indebtedness. Additional indebtedness includes any monetary obligation, or other obligation that may involve the payment of money.

Standard & Poor's also generally requires non-petition provisions in any agreement between the SPE and its creditors. In non-petition provisions, the creditors agree not to petition for insolvency proceedings in relation to the SPE and not to join in any such proceedings. In some cases, a specific intercreditor agreement also may be appropriate.

Standard & Poor's also generally requires limited recourse language to be included in any agreement between the SPE and its creditors which limits the recourse of creditors to the assets funding the rated securities, so that in the event such assets are insufficient to meet the creditors' claims in full, the SPE has no further obligations to those creditors.

No Reorganization or Changes of Ownership

This requirement attempts to ensure that, while the rated securities are outstanding, the insolvency-remote status of the SPE will not be undermined by the purchase by another company of the SPE's shares or any reorganization, dissolution, merger, amalgamation, reconstruction, liquidation, or asset sale. This requirement is generally met by including relevant covenants and restrictions in the appropriate transaction documents. In the case of orphan SPEs, Standard & Poor's also generally requires a prohibition on disposal of the SPE's shares by the shareholder holding the SPE's shares on trust for charitable or other purposes. This shareholder commonly is called the share trustee. As an exception to this prohibition on share disposition, the share trustee may dispose of the shares if it has determined that such action is in the best interests of the holders of the rated securities, or the trustee for the rated securities directs the share trustee to do so (see Shareholder Restrictions below).

Generally, Standard & Poor's also requires that the memorandum and articles of association of the SPE should not be amended without prior written notice to Standard & Poor's (see Shareholder Restrictions below)

Separateness Covenants

Separateness covenants are designed to ensure that the SPE holds itself out to the world as an independent entity, on the premise that if the entity does not act as if it had an independent existence, a court may use the principle of "piercing the corporate veil" to bring the SPE and its assets into the insolvency proceeding of its parent or of an originator. The involvement of an overreaching parent or originator is a threat to the independent existence of an SPE.

Piercing the corporate veil is the remedy exercised by a court when a controlling entity, such as the parent of an SPE, so disregards the separate identity of the SPE that their enterprises are seen as effectively commingled. Creditors with claims against an insolvent company who believe that funds can be properly traced from the company into the SPE could seek this remedy.

An important element of Standard & Poor's insolvency remoteness analysis is the existence of legal comfort that the SPE's assets would not be treated as part of the insolvency estate of its parent or originator. In this regard, the entity should observe certain separateness covenants, set forth in the following section (see "Cayman Islands SPE Criteria" below). In addition, Standard & Poor's may request legal opinions to the effect that the SPE would not be consolidated with an originator or with its parent (although such opinions would not normally be sought or may be sought in a different form where the SPE's parent is itself an SPE or where the shares of the SPE are held in trust for charitable or other purposes; i.e., an orphan SPE).

Security Interests Over Assets

Generally, the SPE should grant first priority security over all of its assets for the benefit of the holders of the rated debt. In the context of a Cayman Islands SPE that is an orphan SPE, certain "excluded assets"

such as the proceeds of its issued ordinary share capital and transaction fees may be carved out of the assets subject to the security interest.

In connection with this criterion, Standard & Poor's generally also requires a debt security interest opinion, which confirms that the holders of the rated securities have a first-ranking security interest over the relevant assets, although in certain cases this may be inapplicable (see, for example, Appendix IX of Legal Criteria for Structured Finance Transactions, April 2002, in relation to security interests perfected under the UCC). These elements help Standard & Poor's in reaching the analytic conclusion that an issuer is an SPE by reducing the incentives of the parent, the creditors of the parent, and any other creditors of the issuer to initiate insolvency proceedings in respect of the issuer to gain access to its cash flows and assets. By reducing the incentive of the parties, the likelihood of an involuntary filing may be reduced.

Shareholder Restrictions

Standard & Poor's general criteria relating to SPEs require the appointment of an independent director to the board of the SPE. This reflects a concern that the directors of the SPE may seek to initiate insolvency or winding-up proceedings in respect of the company if, for example, the directors are also connected with the SPE's operating company parent.

Under Cayman Islands law (based on English case law, which is persuasive but not binding in the Cayman Islands) the directors of a Cayman Islands issuer do not have the power to put the issuer into voluntary liquidation (the two exceptions are cases where the articles of association of the issuer provide for the directors to have this power and where the shareholders have themselves resolved to liquidate the company and delegate the power to present the petition to the directors). Accordingly, the reasons for the "independent director" concept, assuming the exceptions do not apply, are not applicable in the case of a Cayman Islands issuer. Instead, it is necessary to consider the position of the shareholders who, under Cayman Islands law, have the power to liquidate an issuer voluntarily by special resolution.

In the typical orphan SPE structure, Standard & Poor's generally requires that the share trustee should agree not to exercise the voting rights attached to such shares to liquidate the SPE until six months or another applicable preference period after the rated securities have ceased to be outstanding. As an exception to this requirement, the share trustee may vote for liquidation if it determines that such action is in the best interests of the holders of the rated securities or the trustee for the rated securities directs the share trustee to do so. In other structures, Standard & Poor's generally will require an independent shareholder with the power to block a special resolution, or some other arrangement that means that the parent of the SPE is unable to put the SPE into voluntary liquidation except in the same circumstances described above in relation to an orphan SPE.

The same issues arise in relation to the power of the shareholders of the SPE to amend the memorandum and articles of association of the SPE. The share trustee should agree not to exercise such power for so long as the rated securities are outstanding unless prior written notice is given to Standard & Poor's.

Cayman Islands SPE Criteria

Based on the principles discussed above, Standard & Poor's has developed supplemental SPE criteria to help it assess whether a Cayman Islands incorporated company (other than one registered as a segregated portfolio company), subject to the Cayman Islands insolvency regime, is an SPE.

Restrictions on Activities

The SPE should covenant in the transaction documents not to engage in any business or activity other than those necessary for, or incidental to, its role in the transaction.

Debt Limitations

Except in the case of certain multi-use vehicles (see Appendix III of Legal Criteria in Structured Finance Transactions, April 2002), the entity should not incur any debt (other than indebtedness that secures the rated securities) unless (i) the additional debt is assigned the same rating by Standard & Poor's as the issue credit rating requested for the rated securities in a given transaction (at the time of issuance and at all times thereafter), or (ii) the additional debt is fully subordinated to the rated securities and, in either case, (a) is nonrecourse to the entity or any of its assets other than cash flow in excess of amounts

necessary to pay holders of the rated securities, and (b) does not constitute a claim against the entity to the extent that funds are insufficient to pay such additional debt.

In addition to securities, additional debt includes any monetary obligation or other obligation that may involve the payment of money, such as guarantees, indemnities, and covenants by the SPE to release security.

Any agreement between the SPE and its creditors should include non-petition provisions in which the creditors agree not to initiate or join in any insolvency proceedings in respect of the SPE for a period of six months or another applicable preference period.

Generally, Standard & Poor's requires that any agreement between the SPE and its creditors should include limited recourse provisions limiting creditors' recourse to the assets funding the rated securities.

Security

The entity should provide first-priority fixed security over all of its assets, other than certain excluded property.

No Merger or Change of Ownership, Etc.

The entity should not engage in any dissolution, liquidation, consolidation, or asset sale (other than as provided in the relevant transaction documents), so long as the rated securities are outstanding, without prior written notice to Standard & Poor's.

Separateness Covenants

The entity should agree in the transaction documents to abide by the following separateness covenants:

- To maintain books and records separate from any other person or entity;
- To maintain its accounts separate from those of any other person or entity;
- Not to commingle assets with those of any other entity;
- To conduct its own business in its own name;
- To observe all corporate formalities;
- To maintain an arms'-length relationship with its affiliates;
- To maintain separate financial statements;
- To pay its own liabilities out of its own funds;
- To use separate stationery, invoices, and checks;
- To hold itself out as a separate entity; and
- To correct any known misunderstanding regarding its separate identity.

Shareholder Restrictions

The power of the shareholders voluntarily to liquidate the SPE, to amend the memorandum and articles of association of the SPE, and to dispose of the shares of the SPE should be restricted. The power to liquidate the SPE voluntarily may not be exercised, subject to certain exceptions noted above, until six months or another applicable preference period after the rated securities have ceased to be outstanding. Further, the power to amend the constitutional documents may not be exercised so long as the rated securities are outstanding without prior written notice to Standard & Poor's.

Standard & Poor's

A Division of The McGraw-Hill Companies



Published by Standard & Poor's, a Division of The McGraw-Hill Companies, Inc. Executive offices: 1221 Avenue of the Americas, New York, NY 10020. Editorial offices: 55 Water Street, New York, NY 10041. Subscriber services: (1) 212-438-7280. Copyright 2002 by The McGraw-Hill Companies, Inc. Reproduction in whole or in part prohibited except by permission. All rights reserved. Information has been obtained by Standard & Poor's from sources believed to be reliable. However, because of the possibility of human or mechanical error by our sources, Standard & Poor's or others, Standard & Poor's does not guarantee the accuracy, adequacy, or completeness of any information and is not responsible for any errors or omissions or the result obtained from the use of such information.