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THE NEW SECURITISATION FRAMEWORK: WHAT HAS REALLY CHANGED?

On 1 November 2024, the Securitisation Regulations Framework (as defined below) came into force as part of the UK Government's efforts to establish a 'Smarter Regulatory Framework' after Brexit. This note explains the legislative background and compares the Securitisation Regulations Framework (as defined below) with the existing EU rules[1] (the "EU Rules") and the previously applicable onshored EU rules (the "UK Securitisation Regulation")[2].

THE NEW UK RULES AND THEIR BACKGROUND

As part of the Treasury's Smarter Regulatory Framework, some provisions of the UK Securitisation Regulation are restated in The Securitisation Regulations 2024, The Securitisation (Amendment) Regulations 2024 and The Securitisation (Amendment) (No. 2) Regulations 2024, whilst the firm facing rules have been repealed and replaced with new rules created by the Financial Conduct Authority (PS 24/4: the "**FCA Rules**") and the Prudential Regulatory Authority (PS 7/24: the "**PRA Rules**") (the "**Securitisation Regulations Framework**"). The FCA Rules and PRA Rules are closely, but not completely aligned, and careful analysis by legal teams is required as to the interplay on transactions.

The Securitisation Regulations Framework came into force on 1 November 2024, and contains grandfathering provisions for existing securitisations, with the applicable rules being those in force at the time the relevant securitisation position was created.

RELATIONSHIP BETWEEN THE EU RULES, THE UK SECURITISATION REGULATION AND THE SECURITISATION REGULATIONS FRAMEWORK

From Brexit (31 December 2020) until 1 November 2024, the UK Securitisation Regulation applied to UK entities on either the sell-side (originators, original lenders, sponsors and securitisation special purpose entities ("**SSPEs**")) or the buy-side (institutional investors) of transactions which met the definition of "securitisation" in the UK Securitisation Regulation. The UK Securitisation Regulation was the onshored version of the EU Rules (which had applied from 1 January 2019 until Brexit).

The implementation of the Securitisation Regulations Framework aims, on the one hand, to produce consistency with certain changes to the EU Rules after onshoring and, on the other, to diverge from the current EU Rules where more flexibility is advantageous. Investors and originators alike are required when structuring transactions to consider the EU Rules and the Securitisation Regulations Framework if they wish to achieve widespread appeal to UK and EU investors.

On the EU front, the current regulatory arena is in a state of flux as a formal release is expected on 17 June of the EU Commission's proposals to reform the EU Securitisation Regulation[3], following its recent consultation on the EU Securitisation Regulation, the subsequent factual summary and call for evidence together with the evaluation report of the Joint Committee of the European Supervisory Authorities and the consultation and feedback by the European

[1] Regulation (EU) 2017/2402 and any relevant binding technical standards, regulations, instruments, rules, policy statements, guidance, transitional relief, or other implementing measures in relation thereto, in each case as at the date of this article.

[2] The EU Rules as they formed part of domestic law as at 30 December 2020 by virtue of the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) and the Securitisation (Amendment) (EU Exit) Regulations 2019.

[3] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

Securities and Markets Authority ("**ESMA**") on disclosure templates. While the implementation of that proposed reform may take some time, ESMA has also noted that it will explore whether earlier changes could be made to reduce the reporting burden for private securitisations, as part of its consultation on that topic. Changes are also possible in the UK, as the Financial Conduct Authority (the "**FCA**") and the Prudential Regulation Authority (the "**PRA**") are expected to release further updates to their respective rules in 2025.

However, at present, when comparing the EU Rules and the UK Securitisation Regulation with the Securitisation Regulations Framework, the main divergences of interest (unless the transaction is a NPE, synthetic or ESG securitisation) are: (i) the "sole purpose" test for originators for risk retention purposes; (ii) the investor due diligence requirements; and (iii) the ability to replace the risk retention holder. More detail is set out in the comparison table below.

The most significant change however is the architecture of the framework itself, bringing the rules within the remit of the UK's main domestic financial regulators, the FCA (and the FCA Rules apply to unauthorised entities such as originators, original lenders, sponsors and SSPEs which are not otherwise regulated by the FCA) and the PRA. This is likely to result in future divergences from the EU Rules, allowing the rules to be tailored to changing economic circumstances and UK specific market conditions. This is intended to produce a simpler and more agile system of rules, but it also risks the creation of a dual compliance burden. Original lenders, originators, sponsors and SSPEs will need to be mindful of the changing regulatory landscape in both the EU and the UK when assessing compliance.

The table that follows outlines some of the key changes that distinguish the Securitisation Regulations Framework from the UK Securitisation Regulation as well as the current EU Rules.

Comparison of the Securitisation Regulations Framework, the UK Securitisation Regulation and the current EU Rules

Area	Current EU Rules	(Previously applicable) UK Securitisation Regulation	New Securitisation Regulations Framework
Jurisdiction	These do not specify scope but are read to apply to entities established in the EU.	These do not specify scope but are read to apply to entities established in the UK.	Apply only to entities established in the UK which means "an entity which is constituted under UK law with a head office, or, if it has a registered office, that office is in the UK". AIFMs which are not authorised in the UK will no longer be considered institutional investors post-implementation. The PRA Rules do not apply to non-UK firms with branches in the UK.
Jurisdiction - STS	The originator, sponsor and SSPE involved in a securitisation considered STS shall be established in the EU.	The originator and sponsor involved in a securitisation which is not an ABCP programme or an ABCP transaction and is considered STS must be established in the UK. The sponsor involved in an ABCP programme considered STS must be established in the UK.	The originator and sponsor involved in a securitisation which is not an ABCP programme or an ABCP transaction and is considered STS must be established in the UK. The sponsor involved in an ABCP programme considered STS must be established in the UK.
Resecuritisation	The EU Securitisation Regulation includes a ban on resecuritisation (i.e. where the underlying exposures used in a securitisation include securitisation positions) save for grandfathered securitisations and securitisations to be used for the following legitimate purposes: (i) the facilitation of the winding-up of a credit institution, an investment firm or a financial institution; (ii) ensuring the viability as a going concern of such entity in order to avoid its winding-up; or (iii) where the underlying exposures are non-performing, the preservation of the interests of investors.	The UK Securitisation Regulation onshored the then current EU Securitisation Regulation.	The Securitisation Regulations Framework does not include 'legitimate purposes' as an exception on the ban on resecuritisation. Instead, manufacturers can apply to the PRA (or, as applicable, the FCA) for a waiver of the ban, and institutional investors can apply to the relevant regulator for a waiver in order to invest in a resecuritisation.
Synthetic STS securitisations	On-balance sheet synthetic securitisations may achieve STS status.	On-balance sheet synthetic securitisations may not achieve STS status.	On-balance sheet synthetic securitisations may not achieve STS status.
Risk Retention			
"Sole Purpose" test	Under the EU Securitisation Regulation, when identifying which entity may be the risk retainer for the purposes of Article 6 of the EU Securitisation Regulation, an entity shall not be considered to be an originator where the entity has been established or operates for the sole purpose of securitising exposures. The EU RR RTS further provides that an entity shall not be considered to have been established or to operate for the sole purpose of securitising exposures if all of the following	An entity established or operating for the 'sole purpose' of securitising exposures was not permitted to be an originator for the purposes of risk retention. In practice, market participants used the EU regulatory technical standards binding in the EU in relation to risk retention[4] (the "**EU RR RTS**") as non-binding guidance on how to interpret this test in the absence of a UK standard, as the EU RR RTS was not in force at the relevant time and so was not onshored.	Unlike the EU Rules, under the Securitisation Regulations Framework, the definition of 'sole purpose' now specifies factors that should be taken into account (namely: whether the entity has a business strategy and payment capacity consistent with a broader business enterprise and whether the management body has the necessary experience and the entity has adequate corporate governance arrangements) rather than factors that must apply, and the "sole or predominant source of income" limb has been removed, making this test looser

[4] Commission Delegated Regulation (EU) 2023/2175 of 7 July 2023 on supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying in greater detail the risk retention requirements for originators, sponsors, original lenders, and servicers.

Area	Current EU Rules	(Previously applicable) UK Securitisation Regulation	New Securitisation Regulations Framework
	criteria are met: (i) the entity has a business strategy and payment capacity consistent with a broader business enterprise, (ii) the exposures to be securitised and any corresponding income is not its sole or predominant source of income and (iii) the management body has the necessary experience and the entity has adequate corporate governance arrangements.		under the Securitisation Regulations Framework than the EU Rules.
Cash collateralisation for synthetic/ contingent retention	Synthetic or contingent forms of risk retention must be fully collateralised, where an entity other than a CRR or Solvency II firm is acting as the risk retainer.	Synthetic or contingent forms of risk retention must be fully collateralised where an entity other than a credit institution is acting as the risk retainer.	The Securitisation Regulations Framework widens the scope of the exception in the UK Securitisation Regulation to the rule that synthetic or contingent forms of risk retention must be fully collateralised where a CRR firm or a UK Solvency II firm is acting as the risk retainer to encompass investment and insurance firms, which brings the new rules in line with the scope of the exception in the EU Rules.
Non-Performing Exposures (NPEs)	Where a securitisation of NPEs includes a non-refundable purchase price discount, the risk retention requirement will be calculated by reference to the market value of such NPE rather than its nominal value.	The value of NPEs held by the risk retainer was based on the nominal value of the exposures under the UK Securitisation Regulation.	The Securitisation Regulations Framework allows the use of a non-refundable purchase price discount rather than nominal value of the exposures to be used in determining the economic interest held by the risk retainer in NPE securitisations. This reflects the EU Rules.
Transfer of risk retention holding	Permits the risk retainer to transfer its retention holding, (i) in the event of insolvency of the retainer, (ii) where retention is on a consolidated basis and (iii) for legal reasons beyond the retainer's control and beyond the control of its shareholders, where it is unable to continue acting as a retainer.	Did not permit the risk retainer to transfer its retention holding. In practice, market participants used the EU RR RTS as non-binding guidance on how to interpret this test in the absence of a UK standard, as the EU RR RTS was not in force at the relevant time and so was not onshored.	The Securitisation Regulations Framework permits the transfer of a retention holding: (i) on the insolvency of the retainer; and (ii) where retention is on a consolidated basis, however it does not include the ability for the risk retention holder to transfer its retention holding "for legal reasons beyond the retainer's control and beyond the control of its shareholders, where it is unable to continue acting as a retainer" and so is more restrictive than the EU Rules.
Hedging of risk retention holding	Recital 7 of the EU RR RTS provided that hedging should be allowed where it is undertaken prior to the securitisation as a legitimate and prudent element of credit granting or risk management and does not create a differentiation for the retainer's benefit between the credit risk of the retained securitisation positions or exposures and the securitisation positions or exposures transferred to investors.	Hedging retained risk was not permitted, subject to limited exceptions.	The Securitisation Regulations Framework contains a further exception to the rule that the retained risk may not be subject to any credit risk mitigation or hedging, by permitting the hedging of risk retention holdings where such hedging is undertaken prior to the securitisation as a prudent element of credit granting or risk management and it does not create a differentiation for the retainer's benefit between the credit risk of the retained securitisation positions and the positions transferred to investors. This brings the UK Rules in line with the EU Rules.
Institutional investor Due Diligence			
Institutional investor due diligence	Institutional investors must verify that the originator, sponsor or SSPE has made available the information required by Article 7 of the EU Securitisation Regulation in	Institutional investors needed to verify that the originator, sponsor or SSPE has made available the information required by Article 7 of the UK	The Securitisation Regulations Framework take a less prescriptive approach to the disclosures that UK institutional investors must verify have been provided.

Area	Current EU Rules	(Previously applicable) UK Securitisation Regulation	New Securitisation Regulations Framework
	accordance with the frequency and modalities provided for in that Article, including ESMA template reporting. An EU investor cannot rely on UK templates and must receive ESMA reporting templates in order to comply with Article 5 of the EU Securitisation Regulation.	Securitisation Regulation in accordance with the frequency and modalities provided for in that Article, including FCA template reporting. In respect of securitisations where the originator, sponsor or SSPE were not established in the UK, UK institutional investors were required to verify that the originator, sponsor or SSPE had made available information that is “substantially the same” as if such originator, sponsor or SSPE were established in the UK, and as if the UK Securitisation Regulation applies to such entity. This means that UK institutional investors could have accepted ESMA template reporting if it were “substantially the same” as the equivalent disclosure under the FCA templates.	Unlike under the EU Rules of the UK Securitisation Regulation, UK institutional investors must ensure relevant sell-side parties have “made available sufficient information to enable the institutional investor independently to assess the risks of holding the securitisation position and has committed to make further information available on an ongoing basis, as appropriate” together with a list of what that information must include as a minimum. As a result, a UK investor can rely on ESMA templates as the UK requirements are less stringent. UK originators, sponsors or SSPEs are still required to report using the UK reporting templates.
Pricing/Commitment to invest	The current EU Rules require institutional investors to obtain certain documents information prior to “pricing” and do not refer to “commitment to invest”.	The UK Securitisation Regulation required institutional investors to obtain certain information prior to “pricing” and do not refer to “commitment to invest”.	The Securitisation Regulations Framework states that where information is provided in relation to "primary market investments" it should be provided in draft/initial form "before pricing or commitment to invest". This timing clarifies the position as regards private transactions where there is no acknowledged pricing date. Secondary market investors are only required to conduct due diligence on the most up-to-date information available at the time of commitment to invest, as opposed to documents from the time of ‘pricing’.
Delegation	Where an institutional investor has delegated to another institutional investor the authority to make investment management decisions and has instructed such managing party to fulfil that institutional investor’s due diligence obligations, any sanction imposed as a result of such failure may be imposed on the managing party and not on the delegating party.	Where an institutional investor has delegated to another institutional investor the authority to make investment management decisions and has instructed such managing party to fulfil that institutional investor’s due diligence obligations, any sanction imposed as a result of such failure may be imposed on the managing party and not on the delegating party.	The Securitisation Regulations Framework clarifies that where an institutional investor has delegated to a managing party the authority to make investment management decisions, such managing party is responsible for any failure to comply with the relevant due diligence obligation if it is an institutional investor. If the managing party is not an institutional investor, the delegating institutional investor remains liable for compliance with the relevant due diligence obligations. To note that non-UK AIFMs no longer fall within the definition of “institutional investor”.
Trade Receivables	Under the EU Rules the exclusion of trade receivables not originated in the form of a loan from the requirement to verify credit-granting standards is included as a recital in the Eu Securitisation Regulation.	Under the UK Securitisation Regulation, the exclusion of trade receivables not originated in the form of a loan from the requirement to verify credit-granting standards was included as a recital.	Trade receivables not originated in the form of a loan are explicitly excluded from requirement to verify credit-granting criteria under the Securitisation Regulations Framework (previously only stated in a recital in the UK Securitisation Regulation).

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