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## United Kingdom
## Securitisation

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This country-specific Q&A provides an overview of securitisation laws and regulations applicable in United Kingdom.

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# United Kingdom: Securitisation

## 1. How active is the securitisation market in your jurisdiction? What types of securitisations are typical in terms of underlying assets and receivables?

There has been a very active securitisation market for UK-originated assets for several decades. According to data published by the Association for Financial Markets in Europe, the value of outstanding securitisations in markets in the UK, as at the end of Q3 2024, was EUR 224 billion.

Both traditional securitisations (also known as 'cash securitisations' and 'true sale securitisations', in which ownership of the underlying assets is transferred from the originator to a securitisation special purpose entity (SSPE)) and synthetic securitisations (in which ownership of the underlying assets remains with the originator but risk transfer is achieved by the use of credit derivatives or guarantees) are common. Both long term securitisations, funded through the issuance of notes with a maturity of over a year, and asset backed commercial paper securitisations, funded through the issuance of shorter dated commercial paper, are used. Structural and regulatory considerations differ according to the type of transaction. Our answers below are focused on long term cash securitisations, and additional considerations apply in respect of synthetic or asset backed commercial paper transactions.

## 2. What assets can be securitised (and are there assets which are prohibited from being securitised)?

In addition to residential and commercial mortgages, credit cards, personal and auto loans, commercial/trade receivables and corporate loan portfolios (all of which are commonly securitised in the UK and other jurisdictions), other asset classes that have been securitised in the UK include lease and rental receivables, IP royalty receivables, insurance receivables, healthcare receivables, ticket receivables, receivables from public utilities, mobile handset loan receivables and student loan receivables.

From a commercial perspective, any type of receivable or asset pool (ideally homogenous) can be securitised, provided it has a defined or identifiable cash flow which can be financially modelled and risk assessed. However, two restrictions are worth noting.

Firstly, originators cannot select assets to transfer to the securitisation special purpose entity (SSPE) in order to render the losses of those assets to the SSPE, measured over the life of the transaction or over 4 years (if transactions are longer), higher than the losses over the same period on the comparable assets held on the balance sheet of the originator. This restriction on what is commonly referred to as 'cherry picking' of assets by originators is intended to align their interests with those of the investors and serves a similar purpose to risk retention requirements.

However, originators may select assets to be transferred to a SSPE where such assets, as a whole, have a higher credit risk profile compared to other asset classes on the originator's balance sheet and that higher credit risk profile is clearly communicated to investors or potential investors. The requirements under the UK regime for 'comparability' for these purposes have recently been clarified by the UK regulators, with a view to aligning with market practice and the European risk retention technical standards. Clarifications include:

a. requiring that comparability be assessed based on similar factors as between securitised and non-securitised assets, by reference to predicted future performance; and
b. deeming the requirements to be satisfied where the originator securitises all comparable assets, other than those which the originator has a contractual commitment to securitise, and this fact is clearly communicated to investors.

Secondly, resecuritisations by entities established in the United Kingdom are prohibited unless a regulatory waiver (exercised on an individual rather than market wide basis) is obtained.

## 3. What legislation governs securitisation in your jurisdiction? Which types of transactions fall within the scope of this legislation?

Legislative Framework

Until 1 November 2024 (the "**2024 Implementation Date**"), the UK regulatory framework for securitisation, widely

 

referred to (including by the Regulators) as the "UK Securitisation Regulation" or the "UK Sec Reg" (the "**UK Securitisation Regulation**") was a minimally amended version of Regulation (EU) 2017/2401 (the EU Securitisation Regulation) as it was on 31 December 2020 (Brexit Implementation Date)when the UK left the European Union, together with related EU "level 2" and "level 3" texts that were legally binding as at such date. As of the 2024 Implementation Date, the securitisation regulations in the UK comprise the Securitisation Regulations 2024, the Securitisation (Amendment) Regulations 2024, the Securitisation Amendment (No 2) Regulations 2024, and the relevant parts of the rules of the Financial Conduct Authority (the "**FCA**" and the "**FCA Rules**") and the rules of the Prudential Regulation Authority (the "**PRA**" and the "**PRA Rules**"). Together we refer to this regime as the "**UK Securitisation Framework**". The overlap between the FCA Rules and the PRA Rules is complex, but in broad terms the PRA Rules apply to undertakings regulated by the PRA (including UK-regulated banks and UK-regulated insurers) while the FCA Rules apply to originators, sponsors and SPVs which are not PRA-authorised persons and which are established in the UK.

If, in a securitisation, all key sell-side entities (in particular, the originator, original lender, SSPE and, if applicable, the sponsor) are established in the UK, subject to the need to target non-UK investors, the UK Securitisation Framework (and not the regulatory framework of any other jurisdiction) would be the only regulatory framework that applies. i.e., it would be the UK's regulatory framework that requires sell-side entities to retain risk and provide investor reporting in a prescribed manner. The UK is, however, part of the broader European securitisation market and it would be typical for UK securitisations to target investors across Europe. The securitisation regulatory framework in the EU (the "**EU Securitisation Framework**") means that for such a securitisation to be investable by EU investors, those EU investors must be able to satisfy themselves that the securitisation meets certain EU norms. This leads to many securitisations, and their sell-side participants, seeking to comply both with UK regulatory standards and with EU regulatory standards (in particular as to reporting).

The securitisation regulatory frameworks in the EU and UK are, as at the 2024 Implementation Date, mostly identical, although on 9 October 2024 the European Commission launched a consultation on the functioning of the securitisation framework in the EU. Feedback and a call for evidence were published in February 2025 with the outcome of the EU Commission consultation expected later in 2025.

In practice, the burden of dual compliance has been mitigated by the market taking a consistent approach to the interpretation of the UK securitisation regime and the "EU Securitisation Regulation" based on the interpretation and operation of the EU "level 1" text which has been clarified and detailed in technical standards and guidance published after the Brexit Implementation Date. The market approach has been to generally follow such standards and guidance as though they were applicable in the UK (particularly with regards to risk retention). However, greater caution is now required in this regard, particularly as from the 2024 Implementation Date the UK Securitisation Framework contains significantly more detail than the previous UK Securitisation Regulation and does not in every case copy across provisions and guidance from the EU regime (although the UK regulators have broadly confirmed that they intend to use EU guidance published before the end of the Brexit Implementation Date as interpretative, where possible). In addition, the UK and EU rules will continue to develop due to the changes expected to be made by the FCA and the PRA and the outcome of the EU Commission Consultation.

Notable areas where regulatory divergence already exists between the UK and EU regimes include risk retention (e.g., the "sole purpose" test, the cash collateralisation of synthetic or contingent forms of risk retention, and the detailed provisions relating to transfer or hedging of a risk retention position) and institutional investor due diligence (e.g., disclosure requirements, the timing of information provided and delegation). However, the effect of this, to date, has been limited in practice (and is likely to remain so), because of a combination of reasons:

a. Legislation of limited scope: EU legislation published since the Brexit Implementation Date is of limited scope. To the extent that this relates to the EU Simple, Transparent and Standardised (STS) label/regime for securitisations, this has little application to the UK. Although the UK has a similar label/regime, in practice there is very little crossover between these regimes (as to which, see question 7 below).
b. Consistent approach by the market: Market participants have and are, broadly, interpreting the requirements of the UK Securitisation Framework in a manner that is consistent with the EU Securitisation Framework.
c. Regulatory guidance is consistent with EU standards: The Bank of England, the PRA and the FCA have issued statements of policy stating their expectation that firms that they regulate make every effort to comply with EU guidelines and recommendations to

 

the extent that they remain relevant. Although, strictly speaking, this applies only to EU guidelines and recommendations that were applicable as at the Brexit Implementation Date, UK Regulators have not actively sought to publish alternative or conflicting guidance and recommendations.

d. Legislative framework is still in flux: Despite amendments to the UK Securitisation Framework, certain aspects of the EU securitisation regulatory frameworks are yet to be published as law, and UK market participants have generally looked to the draft instruments published in an EU context for practical guidance as to the appropriate interpretation of the parts of the regulatory framework that have been published.
e. EU Securitisation Framework is under review: The attention given to the EU Commission Consultation and its outcome has given some confidence to market participants that possible divergences with the UK Securitisation Framework may be minimised, as does the European Security and Market Authority's (ESMA's) feedback to the consultation paper on securitisation disclosure templates under Article 7 of the "EU Securitisation Regulation", which was published on 20 December 2024, indicating a level of coordination with the EU Commission. ESMA's published consultation paper on the revision of the disclosure framework for private securitisation in February 2025 may, depending on its outcome, however, cause some divergence.

As to future reform of the UK Securitisation Framework in 2025, see Question 24 ("*How is the legal and regulatory framework for securitisations changing in your jurisdiction? How could it be improved?*").

In addition to the securitisation-specific regulatory framework, large parts of the English common law and statutory framework relating to companies, financial services, contract, tort, trusts, insolvency, property and negotiable instruments are relevant to (and underpin the operation of) UK securitisations. Parts of the Financial Services and Markets Act 2000 (FSMA 2000) are also relevant.

Where securitisations target US investors, consideration of the relevant US rules is also required.

Transactions covered by the UK Securitisation Framework

The definition of 'securitisation' within the UK Securitisation Framework is:

*"a transaction or scheme, whereby the credit risk associated with an exposure, or a pool of exposures is tranched, having all the following characteristics:*

a. *payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures;*
b. *the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme; and*
c. *the transaction or scheme does not create exposures which possess all of the following characteristics:*
    i. *the exposure is to an entity which was created specifically to finance or operate physical assets or is an economically comparable exposure;*
    ii. *the contractual arrangements give the lender a substantial degree of control over the assets and the income that they generate; and*
    iii. *the primary source of repayment of the obligation is the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise."*

The extent of this definition has been the subject of an on-going debate, partly because on its face it is very wide and therefore potentially includes certain transactions which do not fall within the conventional market understanding of a 'securitisation'. Each limb of the definition requires separate analysis.

A transaction will not fall within limb (a) of the definition of 'securitisation' above in circumstances in which, on an economic analysis, the credit risk being borne by investors is not principally related to the performance of the underlying exposures. This will often be a difference of degree rather than a difference in kind and therefore may involve a qualitative assessment and a consideration of the transaction as a whole. The key characteristic in determining 'dependency' is a direct correlation between payments in respect of underlying exposures and payments to investors. Where transactions include a payment waterfall specifying the application of payments generated by one or more underlying exposures, or limited recourse provisions whereby the recourse of investors is restricted to such underlying exposures, this may indicate that payments under the transaction structure are dependent on the underlying exposures. The existence of an SPV borrower may also indicate a securitisation structure, because the SPV has fewer additional liabilities that would impact a structure intending to have dependency on the underlying exposures. Conversely, some structures, particularly guaranteed and secured wholesale corporate lending, may reflect lending against one or more underlying exposures but with recourse and the true credit risk against the whole business of the obligors rather than

 

just the performance of the underlying exposures.

Tranches of debt with differing levels of subordination (i.e., limb (b) of the definition of 'securitisation') are an essential feature of almost all public securitisations. However, the regulatory definitions of these terms cover a much broader set of situations, including synthetic transactions where not every tranche takes the form of a debt security, and transactions which – but only due to the other limbs of the 'securitisation' definition – are not securitisations. A number of financing structures, such as portfolio acquisitions, are frequently financed through a combination of bank debt and sponsor equity. Such sponsor equity financing could either take the form of subordinated debt or common equity. Where such financing takes the form of common equity, it is generally understood that no tranching of credit risk will arise because common equity is not a contractually established segment of credit risk (its subordination to debt incurred by the company in question being a matter of general law). Additionally, structural subordination, with borrowing occurring at different levels of a corporate structure, does not typically constitute tranching. This is because, while there is subordination in effect between levels of financing, the subordination is caused by the corporate structure rather than contract. Care, however, is needed when considering how cash flows operate between different levels in such a structure. Certain other forms of credit support, such as liquidity facilities and hedging agreements, are generally also not considered as segments of credit risk and so not 'tranches'.

Specialised lending includes certain types of financing structures for physical assets, including project finance, real estate finance, asset finance and commodities finance. Although these financing structures often use techniques which are commonly associated with securitisations, they fall outside the securitisation regulatory framework.

***UK Capital Requirements***

Certain investors and originators are also subject to UK regulatory capital requirements, including those applying to credit institutions and financial holding companies set out in the assimilated Capital Requirements Regulation (575/2013) (**"UK CRR"**) and those applying to insurers under the 'Solvency II' regime as it applies in the UK. On 15 October 2024, the PRA published a consultation paper (Consultation Paper 13/24 – Remainder of CRR: Restatement of assimilated law) (CRR Consultation Paper) with the PRA's proposals to restate the relevant provisions of the UK CRR in the PRA Rules. Chapter 3 covers sixteen proposals related to securitisation focusing on capital requirements and supervisory processes as informed by responses to the PRA's DP 3/23 – Securitisation: capital requirements consultation. Whilst not consulting broadly on the capital treatment of securitisations, a new formula-based p factor for the securitisation standardised approach was proposed. Although timing for responses ended on 15 January 2025, the PRA's response to the CRR Consultation Paper may be forthcoming in 2025.

## 4. Give a brief overview of the typical legal structures used in your jurisdiction for securitisations and key parties involved.

In a standard securitisation it is common for the originator to continue to administer the receivables on the SPV's behalf under a servicing agreement in return for a servicing fee. The originator will typically maintain the original contact with the underlying debtors. To mitigate the risk of non-performance by the originator of the servicing and collection role, back-up servicers may also be appointed during the lifetime of the transaction, such that an alternative, suitably experienced and creditworthy entity is in a position to take over the servicing of the receivables in the event of a default by the originator/servicer.

It is common for the only physical evidence (other than records on the originator's/servicer's systems and any data tape accompanying the sale) that an obligor has of the transfer in title to the receivables from the originator to the SPV (at least prior to enforcement proceedings being taken against an underlying obligor), to be that payments are made into a specified account. This account is usually subject to a trust in favour of the SPV, whose rights under which are assigned or charged in favour of the security trustee or other security holder.

Paying agents may be used to transfer funds from the SPV to the various transaction parties and investors in a securitisation. After the receivables are collected by the servicer and passed through the SPV's bank accounts to its paying agent(s), the paying agent(s) will use the receipts to pay interest and principal due on the securities together with any other costs and expenses the SPV may have. Payments are made according to a priority order of payments specified in the transaction documents (often referred to as the cash flow waterfall or priority of payments).

Any money left over after all such payments have been made is extracted from the SPV is either retained by the holders of the most subordinated tranche of securities or passed back to the originator using various profit extraction techniques. These profit extraction techniques

 

may include: (i) the originator taking fees for administering the receivables contracts and collecting the receivables, arranging or managing the portfolio of receivables and/or acting as a swap counterparty; (ii) the SPV paying the originator deferred consideration on the receivables purchased; (iii) the SPV making loan payments to the originator in respect of any subordinated loans granted by the originator; and (iv) the originator holding equity securities/the most subordinated tranche of securities in the SPV.

The type of profit extraction used in any given securitisation transaction will depend on a number of factors, including: (i) the nature of the assets in the pool; (ii) the type of credit enhancement used; (iii) rating agency and timing considerations; (iv) accounting and regulatory capital treatment which may be applied; and (v) the tax consequences of the proposed method of profit extraction.

Other securitisation structures (such as master trusts, programmatic securitisation structures, synthetic securitisations and asset backed commercial paper structures) are used in England and Wales. In addition, securitisation techniques are frequently used in asset backed financing structures that are not themselves securitisations (for example, because of the absence of tranching of credit risk).

## 5. Which body is responsible for regulating securitisation in your jurisdiction?

The PRA is responsible for regulating compliance by credit institutions, investment firms and insurance undertakings with their obligations under the UK securitisation regime either in their capacities as regulated institutional investors or as sponsors or originators.

The FCA is responsible for regulating compliance by alternative investment fund managers, undertakings for the collective investment in transferable securities and otherwise unregulated entities that participate in a securitisation (for example, general corporates) either in their capacities as regulated institutional investors, or as sponsors or originators.

If the underlying assets of the securitisation are regulated, then the originator and servicer will need to be regulated. UK residential mortgage and consumer credit lending are regulated by the FCA.

## 6. Are there regulatory or other limitations on the nature of entities that may participate in a securitisation (either on the sell side or the buy side)?

**Retail Clients**

The UK Securitisation Framework limits the sale of securitisations to retail clients by requiring the seller to perform a suitability test on the retail investor. This limitation, in conjunction with other UK law regulatory restrictions on the sale of securities to retail investors, including the UK MiFID II product governance regime (whereby credit institutions and investment firms are required to identify target markets for financial products based on suitability metrics that include knowledge, experience, risk appetite and ability to absorb losses), the UK Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation (under which a PRIIP manufacturer is required to prepare a key information document for each PRIIP that they produce) effectively operate as a regulatory barrier to retail investors investing in securitisations.

**SSPEs, Originators and Sponsors**

The concepts of 'SSPE' (i.e. securitisation special purpose entity or SPV) and 'originator' in the UK Securitisation Framework broadly seek to describe entities that are in fact undertaking an activity rather than limit the entities that may undertake an activity. The UK Securitisation Framework will apply where one or more originator, sponsor or SSPE is established in the UK or an institutional investor falls within the scope of the FCA Rules or the PRA Rules. The "UK established" requirement however does not apply in relation to SSPEs for STS securitisations (in non-ABCP and ABCP transactions) and originators for STS securitisations (in ABCP transactions) (see also. "7. Does your jurisdiction have a concept of "simple, transparent and comparable" securitisations?").

There are no additional UK law limitations of general application.

See also "*9. Are there registration, authorisation or other filing requirements in relation to securitisations in your jurisdiction (either in relation to participants or transactions themselves)?*" below.

## 7. Does your jurisdiction have a concept of "simple, transparent and comparable" securitisations?

The UK has a "simple, transparent and standardised"

 

(STS) regime for securitisations that substantially parallels the equivalent EU regime, and with similar incentives for investors (i.e., more favourable UK regulatory capital treatment in respect of STS securitisations than in respect of securitisations that are not STS). Differences between the regimes do exist, including:

i. the coverage by the EU regime (but not the UK regime) of certain synthetic securitisations;
ii. the fact that for a securitisation to be STS for EU purposes, the originator, sponsor and SPV must be established in the EU, whereas for a securitisation to be STS for UK purposes, only the originator and sponsor must be established in the UK (with no requirement for the SPV to be established in the UK) and only the sponsor involved in an ABCP programme considered STS must be established in the UK; and
iii. the FCA clarified that in most cases, the FCA Rules will not allow mixed pools of buy-to-let mortgages and owner occupier mortgages to be deemed homogenous and a provision was added to make clear that underlying exposures may include corporate bonds for homogeneity purposes, provided that they are not listed on a trading venue.

The STS regime has proved popular, with some 175 public and private transactions notified to the FCA as fulfilling the STS requirements to date.

The jurisdictional requirements described in paragraph (ii) above and the regulatory capital rules relating to the recognition of STS securitisations means that, in practical terms, the UK STS framework is a purely domestic regime that applies only in respect of securitisations set up in the UK and is of benefit only to investors subject to UK regulatory capital rules.

However, it is worth noting that, as in the EU, there is no textual requirement for the original lender to be established in the UK, giving rise to the possibility of UK STS securitisations of non-UK assets. Also, from the perspective of investors that are subject to the UK regulatory capital regime, as of the 2024 Implementation Date, the UK Securitisation Framework allows securitisations treated as STS under non-UK frameworks to be treated as equivalent to STS under the UK regulatory framework for regulatory capital purposes, where such securitisations are:

i. an EU STS securitisation registered with ESMA prior to 30 June 2026; or
ii. registered in a jurisdiction designated by the Treasury.

## 8. Does your jurisdiction distinguish between private and public securitisations?

Broadly, whether a securitisation is public or private for UK purposes depends on whether or not a prospectus must be published in the UK.

Different disclosure requirements apply in respect of public and private securitisations. For a public securitisation, (i) by definition, a UK prospectus must be published in compliance with the UK Prospectus Regulation, FSMA 2000 and the FCA's Prospectus Regulation Rules and (ii) the SSPE is required, since 17 January 2022, to make information available through a securitisation repository (which operates a system for collating and publishing the relevant data) that is registered and supervised by the FCA. A private securitisation does not require a prospectus to be drawn up and does not make disclosure through a securitisation repository. Instead, a private securitisation makes information available to investors, the FCA or PRA (as relevant and in a prescribed notification form only, not the documents and information prescribed by Chapter 2, Article 7 of the PRA Rules and SECN 6.2.2R, 6.2.5R and 6.3 of the FCA Rules (previously Article 7 of the UK Securitisation Regulation)) and, on request, potential investors. As there is no prospectus, in a private securitisation, a transaction summary is required.

Both public and private securitisations are subject to Chapter 2 Article 7 of the PRA Rules and SECN 6.2.2R, 6.2.5R and 6.3 of the FCA Rules (previously Article 7 of the UK Securitisation Regulation) requiring originators, sponsors and SSPEs to make available on an ongoing basis to holders of a securitisation position, the relevant competent authority and, on request, potential investors, certain information on the transaction and underlying exposures. The PRA Rules and FCA Rules set out reporting templates and these templates apply whether the securitisation is public or private.

A similar distinction between public and private securitisations applies in the EU. As such, whether or not a securitisation is public or private depends on:

(i) for EU purposes, whether or not a prospectus must be published in the EU; and

(ii) for UK purposes, whether or not a prospectus must be published in the UK.

The consequence of this is that the same securitisation may be treated as public under one regime and private under the other, typically because a prospectus will usually only be (formally) 'published' in an EU jurisdiction

 

or the UK, but not both.

At present, regulatory obligations relating to public and private securitisations are substantially similar, meaning that this idiosyncratic position does not in practice lead to conflicting obligations. We still however await the outcome of the EU Commission Consultation and the European Security and Market Authority's (ESMA's) coordination with the EU Commission on this topic, which may result in divergence between the reporting obligations in each jurisdiction in relation to public and private securitisations. It will be important for market participants and their lawyers to assess the impact of any changes.

Proposed changes

Both the PRA and the FCA have indicated that they are still in the process of considering whether the UK Prospectus Regulation definition of a public securitisation is achieving the right outcome and whether the disclosure templates for private securitisations could be made more proportionate or principles-based.

At the time the UK Securitisation Framework was first introduced, the FCA noted that it was considering the possibility of expanding the current definition of a public securitisation and suggested that such expansion could cover:

i. securitisations that are subject to primary listings on UK regulated markets or similar non-UK markets where the originator, sponsor or SSPE is located in the UK (thereby excluding overseas securitisations);
ii. primary admissions to trading on an appropriate UK multilateral trading facility (MTF) and similar non-UK venues, where there is at least one UK manufacturer; and/or
iii. securitisations where there is at least one UK manufacturer and where a public announcement or other general communication is made to a wide audience of potential investors, intended to solicit expressions of interest as part of the primary marketing of the securitisation.

The FCA and PRA have indicated that they expect to revisit this topic in 2025.

Implications of changes

Implementing any UK or EU changes to the public/private distinction and associated changes to reporting requirements will require systems development by originators and servicers and is likely to take time. Further, as a consequence of the fact that securitisations are typically structured to attract both UK and EU investors, if changes in the UK do not dovetail with changes in the EU, the effect will be to impose on the securitisation market reporting obligations that are more complex and more onerous (even if the intention of both UK and EU regulators is the opposite). See also Question 10 below.

## 9. Are there registration, authorisation or other filing requirements in relation to securitisations in your jurisdiction (either in relation to participants or transactions themselves)?

In relation to securitisation participants, the carrying out of a securitisation does not, of itself, require a specific regulatory authorisation. However, residential mortgage lending, consumer lending and the servicing of both those types of loan are regulated activities under the FSMA 2000. 'Arranging investments' and 'investing in investments' are also regulated activities under FSMA 2000 and therefore the arrangers and lead managers of securitisations will need to have the correct authorisations to undertake these activities.

In relation to transactions themselves, there is no requirement for securitisations to obtain regulatory approval or registration, except that:

i. originators, sponsors or SPVs must effect ongoing reporting in respect of public securitisations to a UK registered and supervised securitisation repository;
ii. originators, sponsors or SPVs are required to register private securitisations with the PRA (if any of them are authorised by the PRA) or, otherwise, the FCA; and
iii. to qualify as "Simple, Transparent and Standardised", the originator or sponsor of a securitisation must notify the FCA that the securitisation meets the requisite criteria (as to which, see question 7 above).

English companies (including SPVs) are required to register (with the UK registrar of companies) the details of any charges they create.

## 10. What are the disclosure requirements for public securitisations? How do these compare to the disclosure requirements to private securitisations? Are there reporting templates that are required to be used?

***Disclosure and Template Requirements***

Under the UK Securitisation Framework, originators, sponsors and SSPEs established in the UK have extensive transparency obligations both to current and

 

potential investors and to competent authorities. They are required to disclose documentation essential to the understanding of the transaction and, if there is not a prospectus (i.e., a private securitisation), a transaction summary (before pricing or, as introduced by the new UK Securitisation Framework (Chapter 2 Article 7 of the PRA Rules and SECN 6.2.2R(2) of the FCA Rules), before original commitment to invest, as pricing does not always apply to private securitisations) at the outset and loan-level data and investor reports (disclosing how risk is retained), on the basis of specified templates (periodically) and other events-based announcements (on an ad hoc basis). In the case of public securitisations, this disclosure should be made through an authorised securitisation repository approved and registered by the FCA, which operates a system for collating and publishing the relevant data. In the case of private securitisations, no particular method of disclosure is specified, and the parties can implement their own arrangements for making information available. Typically, however, as information is not being made available to a securitisation repository and the FCA does not receive transaction documents and ongoing loan level data, the FCA asks only for a very short notification form to be filed but full template disclosure must still be delivered to investors by a UK sponsor, originator or SPV.

Chapter 5, Articles 2 and 3 of the PRA Rules and SECN 12 of the FCA Rules, require that loan level data and investor reports are disclosed by a UK sponsor, originator or SSPE by way of standardised templates contained within regulatory and implementing technical standards. Although there has been and remains some debate as to certain issues (to what extent fields may be left incomplete on a 'not applicable' or 'no data' basis? To what extent are legacy transactions able to comply with them? What about those transactions which relate to an asset class that does not fall neatly within the templates, for example, non-EU originated receivables? To what extent may confidential and sensitive data be excluded from the templates?) the position in respect of many of such questions has been clarified by published guidance, including questions and answers published in the context of the EU Securitisation Regulation.

Interaction with EU requirements and implications for the market

In cases in which the originator, sponsor and issuer are established outside the UK, investors must (under Chapter 2, Article 5(1)(e) of the PRA Rules and SECN 4.2.1R of the FCA Rules (previously, Article 5 of the UK Securitisation Regulation)) verify only that the originator, sponsor or SPV has 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 a result, a UK investor will no longer need from a regulatory perspective to ensure reporting is provided in a UK-specific template. With the UK requirements being less stringent, a UK investor can therefore rely on ESMA templates when investing in an EU securitisation. UK originators, sponsors and SPVs however are still required to report using the UK reporting templates.

The EU position accordingly now differs, with EU regulatory guidance suggesting that EU investors must ensure that securitisations in which they invest report on the basis of the prescribed EU templates (and limiting the ability for EU investors to view reporting on the basis of UK templates as sufficient). In practice this means that UK securitisations – which will typically seek to attract EU investors – will often provide both EU and UK templates.

The ability for UK investors to invest in EU securitisations that report only on the basis of EU standards does assist UK investors in accessing EU markets unless reporting standards diverge in the future. However, as UK and EU reporting standards currently diverge, unless corresponding flexibility is introduced in the EU, UK originators will face a dual-compliance burden that EU originators do not. It is therefore more important than ever that UK and EU disclosure templates remain aligned.

Between August and October 2023, the FCA and PRA did conduct an initial consultation as to whether the disclosure templates for private securitisations could be more proportionate or principles-based so as to become less extensive than those for public securitisations, whilst still supporting the provision of sufficient information by manufacturers of securitisations to investors. The Securitisation Regulation Framework did not outline the response of either the FCA or the PRA and it is unclear if or when the UK regulators will propose further changes in this area. In relation to the EU templates (which, as noted above, are in practice used for many UK securitisations) further changes may result from the EU Commission Consultation on this topic together with ESMA's consultation on the revision of the disclosure framework for private securitisation.

***Prospectus Requirements***

Under the UK Prospectus Regulation, an issuer of securities that is either (i) admitted to trading on a UK regulated market or (ii) offered to the public in the UK is required to publish a prospectus. The UK Prospectus Regulation governs the content requirements of

 

prospectuses, comprising a general duty of disclosure (the necessary information which is material for an investor to make an informed assessment of the rights attaching to the securities) and specific disclosure items relating to the nature of the securities. Many public securitisations of UK assets are listed on EU listing venues and are subject to the EU prospectus regime.

***UK Inside Information***

Chapter 2, Article 7(1)(f) of the PRA Rules and SECN 6.2.1R(6) of the FCA Rules (previously, Article 7 of the UK Securitisation Regulation) also requires disclosure of any inside information that the originator, sponsor or SSPE is required to disclose under the UK Market Abuse Regulation (UK MAR). The UK MAR applies to financial instruments (i) admitted to trading or for which a request for admission to trading on a UK regulated market, Gibraltar regulated market or EU regulated market has been made; (ii) traded, admitted to trading or for which a request for admission to trading on a UK MTF, Gibraltar or EU MTF has been made; (iii) traded on a UK Organised Trading Facility (OTF), Gibraltar OTF or EU OTF and (iv) other financial instruments, if their price or value depends or has an effect on the price or value of any of these financial instruments.

An issuer of securities that is admitted to trading under the UK MAR is required to inform the public of inside information which directly concerns the issuer. Inside information comprises information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments. Where the UK MAR does not apply, any information relating to significant events such as a material breach, or material amendment, of the transaction documents or a change in structural features or risk characteristics that materially impact the performance of the securitisation must be disclosed.

Many UK public securitisations are listed on EU listing venues and may therefore fall within the scope of the EU Market Abuse Regulation (“**EU MAR**”).

## 11. Does your jurisdiction require securitising entities to retain risk? How is this done?

Under the UK Securitisation Framework (Chapter 2, Article 6 of the PRA Rules and SECN 5 of the FCA Rules (previously, Article 6 of the UK Securitisation Regulation)), there is a general requirement that a UK-established sponsor, originator or original lender retains a material net economic interest of not less than 5% on an ongoing basis, in accordance with one of the prescribed retention methods. The general requirement contained within the UK Securitisation Framework is complemented by detailed provisions contained within regulatory technical standards.

The risk retention obligation is both ‘direct’ and ‘indirect', in that in addition to applying directly to securitising entities, institutional investors pursuant to Chapter 2, Article 5(1)(c) and (d) of the PRA Rules and SECN 4.2.1R(1)(c) and (d) of the FCA Rules (previously, Article 5 of the UK Securitisation Regulation) also have an obligation to verify compliance with the obligation before investing. One consequence of this restriction is that it is imposed on investors in securitisations in respect of which Chapter 2, Article 6 of the PRA Rules and SECN 5 of the FCA Rules (previously, Article 6 of the UK Securitisation Regulation) does not apply directly (for example, a securitisation where none of the originator, sponsor, SSPE or original lender is established in the UK).

There are prohibitions on hedging the retained risk and splitting the risk among different types of retainers, subject to certain limited exceptions, including a further exception introduced by the UK Securitisation Framework, whereby hedging of retained risk is allowed if 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.

See also our commentary on the restriction on so-called ‘cherry-picking’ in our response to question 2 above.

There are five different methods of retaining risk:

i. vertical slice (retention of at least 5% of the nominal value of each class of notes);
ii. pari passu share (retention of an interest in revolving assets equal to at least 5% of the nominal value of the portfolio);
iii. on balance sheet (retention of randomly selected exposures, equivalent to not less than 5% of the nominal value of the securitised exposures, provided that the number of potentially securitised exposures is not less than 100 at origination);
iv. first loss tranche (retention of the most subordinated class of notes, having at least the same maturity as non-retained notes equal to at least 5% of the nominal value of the securitised portfolio); or
v. first loss exposure (retention of a first loss exposure of not less than 5% of the nominal value of each securitised exposure).

 

With respect to non performing exposures (NPEs), the UK Securitisation Framework (Chapter 2, Article 6(3A) of the PRA Rules and SECN 5.2.8R(2) of the FCA Rules) introduced the use of a non-refundable purchase price discount (NRPPD) whereby the requirement for retention would, where appropriate, be calculated on the basis of the net value of the defaulted portfolio on the date of the securitisation (factoring in the NRPPD), as opposed to the nominal value of the underlying assets. The change aligns the UK Securitisation Framework with the EU Securitisation Framework on this point and is intended to reduce the absolute risk retention requirements in relation to NPE securitisations. Some market participants have, in the context of the regulators' consultations, asked for clarification to the rules to allow NPE asset servicers to act as eligible risk retainers – a recent reform in the EU.

Furthermore, the UK Securitisation Framework (Chapter 4, Article 12(3) of the PRA Rules and SECN 5.12R(4) of the FCA Rules) introduced an exception to the rules that "risk is retained on an ongoing basis" in the event of the retainer becoming insolvent, thereby having the effect of avoiding potential forced sales of securitisation positions by investors because of non-compliance with the on-going risk retention requirement. This diverges from the current EU technical standards, where the exception also applies if the retainer for legal reasons beyond the control of its shareholders is unable to continue to act as a retainer although there is the possibility of a waiver under the regulator's general modification and waiver powers. As a result, there could be cross-border compliance issues in the event of the insolvency of the retention-holder (i) for sell-side parties where a securitisation has a mixture of UK and non-UK originators or (ii) for institutional investors.

Regarding the "sole purpose" test (i.e., an originator retaining risk must not be established or operate for the sole purpose of securitising exposures), the UK Securitisation Framework (Chapter 4, Article 2(6) of the PRA Rules and SECN 5.3.6R of the FCA Rules) clarifies that this test requires consideration of whether:

i. the entity has a business strategy and payment capacity consistent with a broader business enterprise; and
ii. the members of the management body have the necessary experience to enable the entity to pursue the established business strategy, as well as adequate corporate governance arrangements.

Although re-securitisations are generally prohibited (with a few exceptions), the UK Securitisation Framework (Chapter 4, Article 17(1) – (2) of the PRA Rules and SECN 5.17R(1)-(4) of the FCA Rules) provides that:

i. where re-securitisation is permitted, a retainer shall retain a material net economic interest in relation to each of the respective transaction levels, consistent with the purpose of the risk retention restrictions;
ii. fully supported asset backed commercial paper programmes (which are not considered to be re-securitisations) would also not be considered as re-securitisations for risk retention purposes;
iii. retranching of an issued tranche by the originator does not amount to re-securitisation for the purposes of risk-retention; and
iv. where there is a permitted re-securitisation, the risk retention rules must generally be complied with at the levels of both the underlying securitisation and the re-securitisation (except where the originator acts as the originator and retainer in the underlying securitisation and securitises only positions retained in excess of the minimum net economic interest in the underlying securitisation, and there is no maturity mismatch).

Finally, both the FCA and PRA have clarified that a CRR firm or a UK Solvency II Firm (e.g. investment firms and insurance firms) do not need to cash collateralise a synthetic or contingent form of retention. For all other firms, cash collateralisation is required.

## 12. Do investors have regulatory obligations to conduct due diligence before investing?

Under Chapter 2, Article 5 of the PRA Rules and SECN 4.2 of the FCA Rules (previously, Article 5 of the UK Securitisation Regulation), institutional investors are required to verify certain matters before becoming exposed to a securitisation position, including that the credit comprising the receivables has been granted on the basis of sound and defined criteria and processes, that the originator has complied with high credit-granting standards, that the structure is compliant with the risk retention requirements, and that the sell-side entities comply with their disclosure transparency obligations.

To comply with its transparency verification obligations, the institutional investor must confirm that sufficient information was made available to assess the risks of holding the securitisation position (which must include, at least, the items listed under Chapter 2, Article 5(1)(e) of the PRA Rules and SECN 4.2.1R (e) of the FCA Rules, as applicable).

Thus, as of the 2024 Implementation Date, when investing in non-UK securitisations, UK investors no longer need to verify that substantially the same

 

information is disclosed with substantially the same frequencies and modalities as would be the case if the originator, sponsor or SSPE were established in the UK. In practice, this reduces the burden on UK investors as there is no longer a need to verify that that the information is provided in a templated format and allows UK investors to continue to rely on ESMA templates when investing in EU securitisations.

Before holding a securitisation position, institutional investors are also required to carry out a due diligence assessment commensurate with the risks involved before investing and, once holding a securitisation position, on an on-going basis, maintain written procedures to monitor the performance of the securitisation, to perform stress tests and be able to demonstrate to competent authorities that they have a thorough understanding of their securitisation position and its underlying exposures.

The UK Securitisation Framework (SECN 4.5 of the FCA Rules and Chapter 2 Article 5 of the PRA Rules) also clarified that where a UK institutional investor appoints another UK institutional investor as its investment manager, it is possible for the first investor to delegate responsibility for compliance with the securitisation due diligence requirements of the FCA and PRA Rules. This affects delegation arrangements with AIFMs who are not authorised in the UK and no longer fall within the definition of institutional investor.

## 13. What penalties are securitisation participants subject to for breaching regulatory obligations?

The FCA and the PRA have extensive powers to impose sanctions on institutions and individuals, including fines, censure, suspension of rights to carry on certain business temporarily or permanently and withdrawal of authorisation.

## 14. Are there regulatory or practical restrictions on the nature of securitisation SPVs? Are SPVs within the scope of regulatory requirements of securitisation in your jurisdiction? And if so, which requirements?

An SPV is normally established with its own corporate identity and independent legal status. An SPV is usually established as a private or public limited company incorporated under the Companies Act 2006 (CA 2006). If the SPV is to issue listed bonds, then it will typically be incorporated as a public limited company in order to comply with CA 2006. Occasionally, an SPV may be a limited liability partnership under the Limited Liability Partnership Act 2000.

If it is desirable that the SPV is not a subsidiary of the originator or other transaction party, the SPV's shares are usually directly or indirectly held by a corporate services provider. The corporate service provider often holds the shares of the SPV on trust for discretionary charitable purposes.

Applicable general regulatory requirements include:

i. issuers of securities admitted to the UK Official List must comply with the applicable Listing Rules and Disclosure and Transparency Rules of the FCA and the EU Market Abuse Regulation; and
ii. SPVs must also comply with the requirements under the CA 2006 or other generally applicable legislation.

The SPV's jurisdiction of establishment is often England and Wales. This has the advantage of increased legal certainty in terms of enforcement and familiarity of market participants with the legislative regime applicable to companies. There may be a variety of reasons for the SPV to be established in other jurisdictions. In determining the SPV's jurisdiction of establishment, regard must not only be had to any tax implications (for the participants in the securitisation but also any restrictions on establishment of a SPV outlined in the UK Securitisation Framework.

Regulation 8A of the Securitisation Regulations 2024 does restrict where an SPV can be established. Originators and sponsors are required to ensure that the securitisation is not carried out by an SPV that is established in a country or territory outside the United Kingdom that is for the time being listed by the Financial Action Task Force as a high-risk jurisdiction. Institutional investors are prohibited from investing in securitisations where the SPV is established in such a territory.

## 15. How are securitisation SPVs made bankruptcy remote?

The SPV is often a separate corporate entity with no trading history and so no initial contingent liabilities. The following contractual provisions are commonly inserted in the applicable transaction documents to assist in insulating the SPV from creditor claims:

i. Limited recourse provisions are used to limit the liability of the SPV to a creditor. Typically, recourse is limited to the net proceeds of disposal or enforcement or by a mechanism to convert securitisation debt to equity on enforcement.

 

ii. Non-petition provisions are also used in English law governed securitisation transactions. These purport to prohibit a creditor from taking legal action or commencing insolvency proceedings against the SPV.
iii. The SPV will typically covenant in the applicable transaction documents not to incur liabilities or to undertake activity outside those contemplated by the securitisation transaction.
iv. Granting security over all the SPV's assets in favour of the security trustee for the SPV's secured creditors, thereby disincentivising third parties from commencing insolvency proceedings against the SPV (as the assets validly the subject of such security will not, with some very limited exceptions, be available to satisfy the claims of unsecured creditors).

It is not possible to be certain that an SPV will be completely insolvency remote. For example, the SPV may always incur tax liabilities and the UK tax authority, HM Revenue & Customs, may not be bound by the contractual provisions set out above.

## 16. What are the key forms of credit support in your jurisdiction?

The key forms of credit support in a securitisation are:

i. Overcollateralisation: This involves the originator transferring underlying assets of a greater aggregate value than the consideration provided by the SPV, so that there is a cushion against non-payment by underlying debtors;
ii. Creating subordinated tranches: The senior tranche will be credit enhanced by providing that senior tranche holders will have priority over junior tranche holders for payment and that the junior tranche holders do not have rights to payment, enforce claims, or accelerate debt against the SPV until the holders of the senior tranches have been paid;
iii. Creating "retained spread": Retained spread is where the amounts that the SPV pays in respect of its liabilities (that is, the securities) is less than the amount it receives from its underlying assets (that is, the receivables transferred to it). The SPV retains the difference as a reserve or retained capital to cover costs and expenses and so improve the creditworthiness of the securities it issues. Retained spread in excess of the SPV's costs and expenses will be returned to the originator; and
iv. Letters of credit, insurance or guaranteed liquidity facilities: These involve an external creditworthy source contracting to make payments in respect of the securities if the SPV is unable to pay amounts due.

## 17. How may the transfer of assets be effected, in particular to achieve a 'true sale'? Must the obligors be notified?

Most classes of account receivables are usually transferred by assignment, which operates as a "true sale" transfer. For perfection, English law makes a distinction between legal and equitable assignments.

To take effect at law: (i) the assignment must be absolute and not purport to be by way of charge only; (ii) the assignment must be in writing signed by the assignor; and (iii) express notice of the assignment (in writing) must be given to the debtor.

An assignment which does not comply with these conditions takes effect as an equitable assignment. However, prior to notice of the assignment being given to the obligor, a subsequent purchaser of a receivable without notice of the prior assignment by the seller may take priority over the claims of the initial purchaser. Further, a subsequent purchaser can, if it notifies the obligor before the initial purchaser does so, require the obligor to make payment to such subsequent purchaser. Moreover, prior to receiving notice of the assignment, the obligor: (i) may continue to discharge its debt by making payments to the seller; (ii) may set off claims against the seller arising prior to receipt by the obligor of the notice of assignment; (iii) may agree amendments to the assigned contract with the seller (as opposed to the purchaser) without the purchaser's consent being required; and (iv) cannot be sued by the purchaser in the purchaser's own name (although there are procedural steps that the purchaser can take that mean that this aspect of an equitable assignment is rarely an impediment to it enforcing an assigned receivable in practice).

## 18. In what circumstances might the transfer of assets be challenged by a court in your jurisdiction?

English courts look at the substance of the transaction and, therefore, whatever labels the parties have given to the transaction are not conclusive. Case law has established the following key questions to be considered to establish whether the transaction is a true sale rather than being re-characterised as a secured loan:

i. Do the transaction documents accurately reflect the intention of the parties and are the terms consistent with a sale as opposed to a secured loan?
ii. Does the originator have the right to repurchase the receivables sold? In a true sale the originator is not

 

entitled to have the assets returned to him if he returns the purchase price to the buyer (this principle will not be offended by customary clean-up call provisions in securitisations).

iii. Does the purchaser have to account for any profit made on a disposition by it of the receivables? In a true sale, if the purchaser sold the assets to a third party for a profit, there is no duty to account to the seller for the profit.

iv. Is the seller required to compensate the purchaser if it ultimately realises the acquired receivables for an amount less than the amount paid? In a true sale, if the purchaser sells the assets to a third party for a loss, there is no right to recover this loss from the seller.

The above factors should only be treated as rules of thumb. The English courts will allow transactions that display some or all of the above characteristics to be treated as sales if they otherwise are more consistent with sales than loans with the grant of security. If the 'sale' to the SPV is found not be a sale, but rather a secured loan, then it may be void for lack of registration with the registrar of companies (if the seller of the assets in question is a UK company, which is usually the case).

## 19. Are there data protection or confidentiality measures protecting obligors in a securitisation?

The handling and processing of information on living, identifiable individuals (personal data) is regulated by Regulation (EU) 2016/679 as incorporated into UK domestic law in the Data Protection Act 2018. UK data protection law aims primarily to give control to individuals over their personal data and contains provisions and requirements related to the processing of personal data of individuals who are located in the UK and applies to any enterprise – regardless of its location and the data subjects' citizenship or residence – that is processing the personal information of data subjects inside the EEA. Controllers and processors of personal data must put in place appropriate technical and organizational measures to implement the data protection principles. No personal data may be processed unless this processing is done under one of six lawful bases specified by the regulation (consent, contract, public task, vital interest, legitimate interest or legal requirement).

Thought and care is therefore required in relation to securitisations: securitisation arrangements can result in entities other than the originator having access to or control over personal data, in particular third party, back-up and replacement servicers. Originators typically ensure that the terms on which they contract with customers are appropriate to enable this to occur lawfully and that customers receive sufficient privacy information (although there is a tension between the expectation under data protection law that individuals are informed and securitisation structures which operate on the basis that individual debtors would not typically know that their debts have been securitised).

Analysis of which parties in a securitisation may constitute data controllers and which (if any) may constitute data processors is important, given the requirements under UK data protection law applicable to each. Such requirements include, depending on the characterisation of a party, registration obligations or requirements for mandatory provisions in contractual documentation. An ongoing debate exists as to whether an issuer SPV, which owns receivables but would never in practice receive personal data relating to the same, should be regarded as a data controller.

Mechanisms to ensure that personal data is adequately protected, but that a securitisation is sufficiently robust to survive the insolvency and resulting disruption of a servicer's operations, vary and include mechanisms that provide, for example, that originators are required to transfer data to replacement or back-up servicers only upon the occurrence of limited, serious trigger events (rather than on an ongoing basis). In some securitisations, information is shared in encrypted form only, with a data trustee appointed to hold the encryption key.

The data protection framework in the UK is based on that which exists in the EU, although the UK framework differs in a number of technical respects from the EU framework.

Data controllers (which may include the originator, the SPV, the servicer and any back-up servicer) must register with the Information Commissioner's Office.

## 20. Is the conduct of credit rating agencies regulated?

Credit rating agencies (CRAs) in the UK are regulated under the retained law version of the CRA Regulation (EU) 1060/2009 (the UK CRA Regulation). In particular, the UK CRA Regulation requires CRAs based in the UK to be registered with the FCA, which is also responsible for the ongoing supervision of these CRAs and specifies the circumstances in which financial institutions can use credit ratings for regulatory purposes.

UK financial institutions can only use for regulatory

 

purposes, those credit ratings that have been issued by FCA registered CRAs. Where the credit rating is issued in a third country outside of the UK, the UK CRA Regulation, by way of exception, permits the credit rating to be endorsed by a registered CRA or certified by the FCA.

The UK CRA Regulation imposes specific requirements on registered credit rating agencies, including relating to their independence and avoidance of conflicts of interest, their methodologies and disclosures. The UK CRA Regulation also imposes obligations on securitisation issuers, including: (i) appointing at least two CRAs to rate any securitisation bond it is having rated; and (ii) to consider appointing at least one CRA with less than a 10 per cent total market share and if it decides not to, to document such determination.

## 21. Are there taxation considerations in your jurisdiction for originators, securitisation SPVs and investors?

In relation to originators, the key taxation considerations include:

*Corporation tax*

In respect of a traditional securitisation (where ownership of the underlying assets is transferred from the originator to an SPV), the corporation tax treatment of the asset transfer will depend on the nature of the underlying assets and the transfer may give rise to a corporation tax charge for the originator on any gain resulting from the disposal. The current rate of UK corporation tax is 25 per cent.

In respect of a synthetic securitisation (where ownership of the underlying assets remains with the originator), the corporation tax treatment will depend on the nature of the financial instrument used to transfer the risk to the SPV. Where, for example, the risk transfer is achieved by use of a credit derivative, the originator would expect to be taxed in accordance with the normal rules for derivatives.

*VAT*

Generally speaking, the securitisation, be it a traditional or synthetic securitisation, should not give rise to a VAT cost for the originator, although the exact VAT consequences can be complex.

*Stamp taxes*

Other than in the case of certain interests in real estate and certain equity-like securities, generally no UK stamp taxes or other transfer taxes will be payable on the disposal of assets to an SPV or the entry into of guarantees or credit derivatives.

In relation to securitisation SPVs, the key taxation considerations include:

*Corporation tax*

Most traditional (true sale) securitisations to UK resident SPVs will be structured to fall under the Taxation of Securitisation Companies Regulations 2006 (SI 2006/3296). The regulations allow securitisation companies to be subject to corporation tax only on the profit retained within the company after the payment of its disbursements under the payment waterfall. Broadly, in order to fall within this tax regime, the securitisation SPV must:

i. qualify as a securitisation company;
ii. satisfy the 'payments condition' at all times (i.e., that all amounts received are paid out within 18 months of the end of the accounting period, other than the SPV's retained profit in the payment waterfall, and any amounts reasonably required to cover losses or expenses arising from the company's business or maintain or enhance the company's creditworthiness); and
iii. not be a party to the securitisation or any related transaction for an unallowable purpose, being a purpose not amongst the business or other commercial purposes of the securitisation company (for example, a main purpose of avoiding UK tax).

Generally, a securitisation company is either:

i. an SPV that issues notes (which have a total value of at least GBP 5 million at the date of issue) wholly or mainly to independent investors as part of a 'capital market arrangement' (i.e. security is granted in respect of the notes) (a note-issuing company);
ii. an SPV that is funded wholly or mainly by a note-issuing company or intermediate borrowing company, and holds financial assets as security for the capital market arrangement entered into by the note-issuing company (an asset-holding company);
iii. a company that is funded wholly or mainly by a note-issuing company or another intermediate borrowing company and is a party to creditor relationships with an asset-holding company or another intermediate borrowing company (an intermediate borrowing company);
iv. an SPV that acquires or holds financial assets for the purpose of transferring them to an asset-holding company or note-issuing company (or itself becoming the same) (a warehouse company); or

 

v. a company that was an asset-holding company or intermediate borrowing company whose obligations under debtor relationships to a note-issuing company or intermediate borrowing company have been transferred to or replaced by obligations under debtor relationships to one or more companies carrying on a business of banking (a commercial paper funded company).
vi. Securitisation companies are as a rule, not involved in any business activities other than those that are incidental to its role as an SPV in the securitisation.

*Withholding tax*

In circumstances where the necessary connection to the UK is present, payments of interest on certain types of receivables, for example receivables arising from mortgages or loans, are subject to UK withholding tax unless an exemption applies. Generally, where the receivables are sold to a UK resident SPV, an exemption should apply to payments on the underlying receivable so that no obligation to withhold UK income tax arises for the underlying obligor. It is therefore usual for loan portfolios to be securitised through a UK tax resident SPV.

In relation to investors, the key taxation considerations include:

*Withholding tax*

Interest paid on securitisation notes issued by an SPV in the UK will be subject to UK withholding tax at the basic rate of income tax (currently 20 per cent) unless an exemption applies.

An exemption that is often used, particularly where notes are intended to be widely distributed, is the 'quoted Eurobond' exemption that applies where the notes are listed on a 'recognised stock exchange' or admitted to trading on a 'multilateral trading facility' operated by a 'regulated recognised stock exchange', being a recognised stock exchange that is regulated in the UK, the EEA or Gibraltar. Many exchanges qualify as 'recognised stock exchanges', including the London Stock Exchange, Euronext Dublin, the Luxembourg Stock Exchange and the International Stock Exchange.

Where notes are privately placed with investors resident in jurisdictions which are party to a double tax treaty with the UK that includes a 'non-discrimination' provision, the 'qualifying private placement' exemption from UK withholding tax may apply – provided the other relevant conditions for applicability of the exemption are also met. Alternatively, relief from withholding tax may be obtained by virtue of a double tax treaty (utilising, where appropriate, HM Revenue & Customs' Double Taxation Treaty Passport Scheme).

*Stamp taxes*

The issue of notes falls outside the scope of UK stamp duty and stamp duty reserve tax. Generally, the transfer of notes issued by a note-issuing company are also exempt from UK stamp duty and stamp duty reserve tax, provided the notes do not carry a right of conversion into, or to the acquisition of, other securities (other than solely securities issued as part of a capital market arrangement by the same note-issuing company).

Alternatively, the transfer of notes that fall within the loan capital exemption from UK stamp duty and stamp duty reserve tax are exempt from such duties and securitisation notes are usually structured to qualify as such.

## 22. To what extent does the legal and regulatory framework for securitisations in your jurisdiction allow for global or cross-border transactions?

The UK securitisation market is highly international in nature. Typically, the transaction parties establishing the securitisation and the investors are established in a range of different jurisdictions. UK transactions are often structured to attract global investors, including by way of compliance with US requirements as to, amongst other things, risk retention (and the Dodd-Frank Act).

As the UK Securitisation Framework is now distinct from the EU Securitisation Framework, it is likely that legislators and regulators will need to be wary of the practical implications of divergences between the UK and EU securitisation regimes.

The current position is that there are fewer barriers to UK investors investing in non-UK securitisations than there are to EU investors investing in UK securitisations. For an explanation of why this is the case, see also our answers to:

i. "3. What legislation governs securitisation in your jurisdiction? Which types of transactions fall within the scope of this legislation?" as to the interrelationship between the EU and UK;
ii. "7. Does your jurisdiction have a concept of "simple, transparent and comparable" securitisations" as to the possible introduction of an STS equivalence regime;
iii. "9. What are the disclosure requirements for public

 

securitisations? How do these compare to the disclosure requirements to private securitisations? Are there reporting templates that are required to be used?" and

iv. "11. Do investors have regulatory obligations to conduct due diligence before investing?" as to the requirements for UK investors to verify certain attributes (including disclosure) in respect of non-UK securitisations.

## 23. How is the legal and regulatory framework for securitisations changing in your jurisdiction? How could it be improved?

By the end of 2025, in the UK, responses by the Financial Conduct Authority and the Prudential Regulation Authority on further changes to the UK Securitisation Framework are expected. In the EU, feedback from the European Commission on the EU Commission Consultation is also likely, including in relation to each of ESMA's consultation papers on securitisation templates under Article 7 of the EU Securitisation Regulation and the disclosure framework for private securitisation.

There is, however, currently a single European securitisation market. If EU and UK regulatory requirements diverge, that is likely to increase the burden on market participants to dually comply with both EU and UK requirements. This will increase friction in the market and – should divergence occur to a significant extent – market fragmentation could result. A risk is that this may occur as an unintended consequence of efforts of both EU and UK investors to streamline requirements and vitalise the markets, if those efforts occur independently. Minimising regulatory divergence is key to the efficient functioning of the European securitisation market.

See our responses to questions 3, 8 and 10 for more details.

***Developments in the Law***

***The UK Securitisation Framework***

The UK Securitisation Framework, having placed the securitisation rules largely within the rulebooks of the PRA and FCA respectively, has given the UK regulators a large amount of flexibility to effect change to the securitisation regime without requiring changes to primary legislation. Further change is anticipated in 2025, especially on the public/private distinction.

Grandfathering provisions in the UK Securitisation Framework govern the treatment of pre-1 November 2024 securitisations previously governed by the UK Securitisation Regulation such that they can rely on the position at the time the relevant securitisation was issued.

***Court of Appeal judgment of Johnson, Wrench and Hopcraft***

The recent Court of Appeal decision in the cases of Johnson, Wrench, and Hopcraft has raised serious turmoil in several sectors (particularly, motor finance). They address the level of information required to be disclosed by brokers with regards to commissions received from lenders and potential liability of such lenders where the information requirements are not complied with. In the cases of Wrench and Hopcraft, the commissions were deemed to be fully secret, in breach of the broker's duty to provide information, advice or recommendations on an impartial or disinterested basis ("**Disinterested Duty**"). As a result, the Court of Appeal decided that the lenders (as payers of the commission) were primarily liable in these two cases. In Johnson, however, the Court of Appeal determined that, although there was no breach of Disinterested Duty, the broker was in breach of its fiduciary duty, as the information disclosed was deemed insufficient for the borrower to provide informed consent to the broker's commission. In this case, payment of the broker's commission by the lender was considered dishonest and the lender was held liable towards the customer, for being an accessory to the breach of fiduciary duty.

Although the full implications of these decisions are yet to be assessed, as the defendant lenders have been given permission to appeal to the Supreme Court with a hearing expected in the next two quarters, further action is expected from the FCA to provide additional clarifications to consumers and market participants, considering the wide range of intermediated credit products that may be impacted by the ruling.

***Further considerations***

There are, potentially, some elements of securitisations that are typically achieved contractually in the UK, but could be achieved legislatively, as is done in some other jurisdictions, such as:

1. the insolvency remoteness of securitisation SPVs;
2. rules as to the enforcement of security that are tailored to securitisations and expressly seek to maximise value recovery in that context while clearly giving full effect to transaction waterfalls; and
3. providing for clear separation between

 

different transactions issued by the same SPV issuer or, even, the clear separation between different silos of assets held by the same SPV issuer (for example, similar to the compartments in a French *Fonds commun de titrisation*) supporting different transactions.

More broadly, global investors seek to invest in UK securitisations in order to obtain exposure to UK securitised assets. Steps taken that improve the performance of such assets will make such assets and their securitisations more attractive to investors globally. Regulatory reforms that encourage UK investors, such as pension funds, to deploy capital towards UK securitisations may result in deeper UK markets and enhance, through securitisations, the funding of the UK real economy.

### 24. Are there any filings or formalities to be satisfied in your jurisdiction in order to constitute a true sale of receivables?

No filings or formalities are required in England and Wales to ensure that an assignment of receivables constitutes a true sale.

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