The New UK Securitisation Framework

1 November 2024

After a 6-month lead-in period triggered by the publication of the final rules of each of the Financial Conduct Authority (the **FCA**) and the Prudential Regulatory Authority (the **PRA**) in relation to securitisations, the New UK Securitisation Framework has now formally come into force as of 1 November 2024 and the old UK securitisation framework, derived from EU law, has now been revoked (although see "Grandfathering" below).

As has been generally discussed, the New UK Securitisation Framework is less of a complete revolution and break from the old UK securitisation framework and more of an evolution. The substantive rules remain materially the same bar some important exceptions. This article aims to provide a timely and high-level reminder of certain of these exceptions and to highlight certain divergences with respect to the position under the EU securitisation regime.

The New UK Securitisation Framework

As of 1 November 2024, the UK regulatory framework governing (the "**New UK Securitisation Framework**") will consist of the following legislative framework:

Legislation	Summary
The Financial Services and Markets Act 2023 (Commencement No. 7) Regulations 2024 (S.I. 2024 No. 891)	Revokes Regulation (EU) 2017/2402 as assimilated into the domestic laws of the United Kingdom, by operation of the European Union (Withdrawal) Act 2018 and as amended by the Securitisation (Amendment) (EU Exit) Regulations 2019 (the "**UK Securitisation Regulation**") and the pre-1 November 2024 UK Securitisation Regulation regime and puts into place the New UK Securitisation Framework, each as at 1 November 2024
The Securitisation Regulations 2024 (S.I. 2024 No. 102) (the "**UK Securitisation Regulations 2024**")	Implementing the overarching framework for the New UK Securitisation Framework and empowering the FCA and the PRA to make detailed rules within such framework
The Securitisation (Amendment) Regulations 2024 (S.I. 2024 No. 705)	Tweaking certain aspects of The Securitisation Regulations 2024 and setting

	out due diligence requirements for occupational pension schemes
FCA Securitisation sourcebook (SECN) (the "**FCA Rules**")	New rules with respect to securitisations for entities within the Financial Conduct Authority's (the "**FCA**") supervisory supervision (see "*Who does the New UK Securitisation Framework apply to? – Rulebooks – FCA Rules" below)*
New Securitisation Part of PRA Rulebook (and consequential amendments to PRA Rulebook) and an updated PRA Supervisory Statement regarding general requirements and capital framework (the "**PRA Rules**")	New rules for entities within the Prudential Regulatory Authority's (the "**PRA**") supervisory supervision (see "*Who does the New UK Securitisation Framework apply to? – Rulebooks – PRA Rules" below)*

Grandfathering

The New UK Securitisation Framework contains "grandfathering" provisions to govern the treatment of pre-1 November 2024 securitisations previously governed by the UK Securitisation Regulation. The FCA Rules and the PRA Rules cover this in slightly different ways, but fundamentally the New UK Securitisation Framework applies to:

(a) securitisations where securities are issued on or after 1 November 2024; and

(b) those securitisations where securities are not issued, but where the initial securitisation position or a new securitisation position has been created on or after 1 November 2024.

For those securitisations which fall outside of the above, i.e. securitisations where the initial securitisation position was created on or after 1 January 2019 and before 1 November 2024 and no new securitisation positions are created after 1 November 2024 the UK Securitisation Regulation and the pre 1 November 2024 securitisation regime (the "**Pre 1 Nov UK Securitisation Regime**") shall apply. Notably, the FCA and the PRA did not provide for an option for pre 1 November 2024 transactions to opt into the New UK Securitisation Framework.

Where there are amendments to, or further issuances in relation to, pre 1 November 2024 transactions, an examination as to whether such amendments result in such transaction losing its grandfathering and becoming subject to the New UK Securitisation Framework needs to be undertaken.

Existing EU guidance

The PRA and the FCA have broadly confirmed that they intend to continue to use, as they did with respect to the UK Securitisation Regulation, EU guidance published before the end of

the Brexit transition period as interpretative to the extent that such guidance has not been withdrawn or superseded.

Who does the New UK Securitisation Framework apply to?

Geographical applicability

United Kingdom

Whilst in certain respects the jurisdictional scope of the EU Securitisation Regulation is subject to some uncertainty, the UK Securitisation Framework is clearer in this regard. The FCA Rules expressly apply only to entities established in the United Kingdom (apart from the definition of "institutional investor" as its scope is set out in the UK Securitisation Regulations 2024). The PRA Rules relevant to all categories of PRA-authorised persons who are established in the UK (including CRR firms, Solvency II firms, non-CRR firms, and non-Solvency II firms), qualifying parent undertakings (which comprise financial holding companies and mixed financial holding companies), credit institutions, investment firms, and financial institutions that are subsidiaries of these firms. The PRA Rules are not relevant to non-UK firms with branches in the United Kingdom.

UK and EU dual compliance

Where a securitisation transaction involves entities which will fall within the governance of the New UK Securitisation Framework and also entities subject to the EU securitisation regime, consideration will need to be given to both regimes. Whilst there is currently broad alignment between the two regimes, it is foreseen that there is scope for further divergence (see "What next?" below).

Rulebooks

PRA Rules

The PRA Rules apply to an entity to a securitisation transaction acting as an originator, sponsor, original lender, a securitisation special purpose entity (a "SSPE") or an institutional investor which is also a PRA-authorised entities.

FCA Rules

The FCA Rules apply to an entity to a securitisation transaction acting as an originator, sponsor, original lender, a SSPE or an institutional investor which are FCA-regulated entities. In addition, pursuant to their rules setting powers under the Designated Activities Regime established by the Financial and Services Markets Act 2023, th FCA will also extend their oversight to certain sell-side entities acting as securitisation transaction parties, regardless of their authorisation status i.e. a person that is established in the United Kingdom that is (a)

a manufacturer (i.e. an original lender, sponsor, originator or SSPEs of a securitisation) or (b) selling a securitisation position to a retail client located in the United Kingdom. Therefore, even if an entity participating in a securitisation transaction is not typically regulated by the FCA it should not assume that the FCA Rules do not apply to it. The FCA will also extend their supervision to entities applying to be a third-party verifier (i.e. STS verification agents) and securitisation repositories (and those applying to become a securitisation repository).

Divergence Between Rulebooks

One important point to consider with regard to the New UK Securitisation Framework is that given the division of the regime into the FCA Rules and the PRA Rules there is no one single source of rules that should be consulted with respect to a transaction. Whilst there is a general understanding between the PRA and the FCA that there should be a alignment between the two rulebooks, it should not be assumed that the position under one set of rules is exactly the same under the other.

Evolution not revolution

As mentioned above, as at 1 November 2024, the New UK Securitisation Framework represents an evolution of the assimilated EU securitisation framework that form the pre-1 November 2024 UK securitisation regime. The points set out below are a high-level summary of some of the key differences:

Risk retention

Under the old UK securitisation framework, Article 6 of the UK Securitisation Regulation was supplemented by Assimilated Regulation (EU) 575/2013 (the "UK CRR RTS"). The PRA Rules and the FCA Rules set out rules with respect to risk retention which are similar to the UK Securitisation Regulation and the UK CRR RTS position with updates to reflect certain of provisions under Regulation (EU) 2023/2175 (the "EU RR RTS"). Material points to note are:

- *Sole Purpose Test* – whilst the requirement in the UK Securitisation Regulation that an entity will not be considered to be an originator where the entity has been established or operates for the sole purpose of securitising exposures remains in the New UK Securitisation Framework, this test has been fleshed out in the New UK Securitisation Framework. The additional language in the PRA Rules and the FCA Rules are similar to the wording in the EU RR RTS, however, it is not the same which means that any transaction with both a UK and an EU nexus will need to be carefully considered to ensure that both regimes are complied with.
- *Cash Collateralisation* - if a synthetic or contingent form of risk retention is held, the New UK Securitisation Framework mirrors the UK RR RTS in that whilst typically such retention option must be fully cash collateralised, there is an exception to this

requirement for cash collateralisation where a credit institution is acting as the risk retainer. However, the New UK Securitisation Framework extends this exception, the same manner as the EU RR RTS, to include investment firms and insurance firms (although under the New UK Securitisation Framework only UK firms will benefit from the exception).

- *Non-performing exposures* – the New UK Securitisation Framework has moved towards the position under the EU Securitisation Regulation with respect to the facilitation of NPE securitisations i.e. allowing the net value of the non-performing exposures to be used instead of the nominal value of such exposures in determining the economic interest held by the risk retainer. However, the New UK Securitisation Framework does not, unlike the EU Securitisation Regulation and the EU RR RTS, allow the servicer of a non-performing exposure securitisation to act as the risk retainer.
- *Transfer of risk retention holding* – the New UK Securitisation Framework whilst expanding on the ability of the risk retainer to transfer its risk retention holding in the event of its insolvency, it does not go as far as the EU RR RTS in allowing a transfer where the risk retainer can no longer hold the risk retention interest as a result of legal reasons beyond its control and beyond the control of its shareholders.
- *Hedging* – the New UK Securitisation Framework has moved a recital in the EU Securitisation Regulation into an operative provision allowing for hedging of the risk retention holding where such hedging is not against the credit risk of the risk retention holding or where it is undertaken prior to the securitisation as prudent credit granting/risk management where there is no differentiation for the risk retention holder's benefit between the credit risk of the retained securitisation positions or exposures and the securitisation positions or exposures transferred to investors.

Investor Due Diligence

The New UK Securitisation Framework largely mirrors those set out in Article 5 of the UK Securitisation Regulation. There are however some amendments which are of note:

- *Amends to Article 5(1)(e) and (f)* – the New UK Securitisation Framework has amended the previous position under the UK Securitisation Regulation with respect to the requirements that institutional investors need to satisfy themselves have been complied with in relation to the disclosure of information in relation to the relevant securitisation. The New UK Securitisation Framework provides, that an institutional investor must verify that the 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. Accordingly, the New UK Securitisation Framework allows UK

institutional investors to take a principles based approach which is particularly beneficial with respect to "third-country" securitisations where previously under Article 5(1)(f) of the UK Securitisation Regulation UK institutional investors were required to consider the unclear requirement to obtain information that is "substantially the same" as if it were a securitisation with a UK sell side party (i.e. an originator, sponsor or SSPE established in the UK). Additionally, this is to be contrasted with the strict approach under the EU Securitisation Regulation requiring EU institutional investors to ensure that even with a "third-country" securitisation they obtain all information in the prescribed form as required by Article 7 of the EU Securitisation Regulation.

- *Pricing/Commitment to invest* - one issue that was apparent under the UK Securitisation Regulation was the obligation for institutional investors to obtain certain documentation and other information before pricing. This requirement did not align well with market practice in particular with respect to private securitisations and secondary market trades. The New UK Securitisation Framework provides that where required the information is provided in relation to "primary market investments" in draft/initial form "before pricing or commitment to invest", an attempt to align this requirement with the general market convention under the Pre 1 Nov UK Securitisation Regime that "pricing" was considered to be when the securitisation transaction documentation was signed. It is thought that "commitment to invest" is also not intended to refer to the signing of a commitment letter prior to agreement of more detailed transaction documents. Finally, with respect to secondary trades the reference to "before pricing" is removed and instead the obligation is solely with respect to the "commitment to invest" and final form documents (updated as necessary) i.e. the institutional investor is only required to verify before the time of its economic commitment in the transactions rather than from the date of the creation of the securitisation.

- *Delegation* - the New UK Securitisation Framework provides that that where an institutional investor (the managing party) has been given authority by an institutional investor to make investment management decisions on its behalf which might expose it to a securitisation, the managing party, where it is also subject to due diligence obligations under the PRA Rules or the FCA Rules, is responsible for any failure to comply with the relevant due diligence obligation and not the institutional investor who is exposed to the securitisation. In all other cases the delegating institutional investor remains liable notwithstanding the delegation.

- *Trade Receivables* - trade receivables have been explicitly excluded in the New UK Securitisation Framework from a UK institutional investor's requirement to verify credit-granting standards (provided such receivables are not in loan form). Previously this was stated in a recital in the UK Securitisation Regulation.

Transparency

The material change with respect to the transparency obligations of the sell-side parties to a securitisation is in relation to the timing as to when certain information is required to be provided to investors to mirror the requirements discussed above with respect to "before pricing" and a "commitment to invest". Other than this, the New UK Securitisation Framework largely replicates Article 7 of the UK Securitisation Regulation in terms of the required reporting templates and the reporting timelines. However, it is anticipated that this is a temporary position and further changes are to be expected particularly with respect to reporting requirement particularly in relation to private securitisations and ESG reporting (see "*What's Next - UK Securitisation Regime - transparency consultation*").

Market Reception

It is anticipated that market participants will largely welcome the adjustments to the UK securitisation regime through the New UK Securitisation Framework in not creating a schism with the Pre 1 Nov UK Securitisation Regime and also leaving a broad alignment between the UK securitisation regime and the EU securitisation regime. However, it is clear more change is on the way both within the UK and the EU with potential significant divergence between the two. By setting the New UK Securitisation Framework largely within the rulebooks of the FCA and the PRA, the UK regulators have been granted a large degree of flexibility to manoeuvre to respond to market demands and concerns. The degree to which the UK regulators will utilise this flexibility with a result that divergence between the Pre 1 Nov UK Securitisation Regime and/or the EU securitisation regime increases remains to be seen. We will set out in future briefing notes any further material developments.

What's Next?

As noted above the New UK Securitisation Framework is not the final position with respect to the regulation of securitisations within the UK. The regulatory framework both within the UK and the EU is currently under material review and accordingly a number of public consultations have been undertaken, are in progress or are planned.

UK Securitisation Regime - transparency consultation

Both the PRA and the FCA have stated that they intend to consult on further changes to the securitisation rules in Q4 2024/Q1 2025. The FCA elaborated in Policy Statement PS 24/4 that in this second consultation the FCA plans to review the definition of public and private securitisations and the associated reporting regime, amongst other areas for policy

consideration, with the aim of making the reporting regime more proportionate and will also consider enhancing ESG reporting.

UK Securitisation Regime – restatement of the UK Capital Requirements Regulation

On 15 October 2024, the PRA published a consultation paper (Consultation Paper 13/24) with the PRA's proposals to restate the relevant provisions in the assimilated Capital Requirements Regulation No 575/2013 in the PRA Rulebook and other related policy materials. Chapter 3 of the consultation paper sets out the PRA's proposals for rules to restate the PRA's firm-facing requirements in relation to securitisations and minor changes to the non-performing exposures securitisations part of the PRA Handbook. Whilst not consulting on broadly on the capital treatment of securitisations, the consultation paper makes material proposals with respect to, amongst other matters, a new "formula" based p factor for the securitisation standardised approach. Responses are requested in relation to the consultation paper by 15 January 2025.

EU Securitisation Regime

On 9 October 2024, the EU Commission published a targeted consultation on the functioning of the EU securitisation framework. The consultation, following a report published on 9 September 2024 by the EU Commission calling for the EU Capital Markets Union to be completed and the securitisation framework revisited, is a framed as a wide-ranging consultation with the securitisation market as to the effectiveness and function of the securitisation framework within the EU. Many are considering the consultation and the potential for a revision to the EU Securitisation Regulation to be a significant opportunity to overhaul the EU securitisation regime. The consultation period ends on 4 December 2024. The EU Commission expects to adopt proposals and potentially bring forth a formal legislative proposal as early as H1 2025.

Contact us

The issues discussed above are a high-level run through of the material points in the New UK Securitisation Framework, if you would like to discuss the New UK Securitisation Framework in more detail or have any other questions in relation to securitisations and/or asset back financings, please contact Jon Segal, Ed Bellamy, or your usual Fox Williams contact.

This note is for general guidance only and should not be relied on as legal advice in relation to a particular transaction or scenario.