UK Securitisation Framework Update

The UK Securitisation Framework came into force on 1 November 2024 and revoked the previous EU legislation that had been retained under UK law ("**Previous UK SR**"). The new regime represents a significant shift in the way that securitisation is regulated in the UK, by placing power to make and adjust rules in the hands of the regulators. This article provides a brief recap of the UK Securitisation Framework, application of the framework and considers some items of divergence and convergence between the EU and UK rules.

UK Securitisation Framework recap

The UK regime has been implemented through primary and secondary legislation and rules set by the FCA and PRA (together the "**UK Securitisation Framework**").

- Primary legislation: The Financial Services and Markets Act 2000 (as amended by The Financial Services and Markets Act 2023) (together, "**FSMA**") – FSMA sets out the framework by which all EU assimilated law governing financial services will be revoked and replaced by new UK rules. FSMA also established the designated activities regime ("**DAR**") and granted HM Treasury powers to designate certain activities relating to financial markets, exchanges, instruments, products or investments to be subject to the DAR in secondary legislation.
- Secondary legislation: The Securitisation Regulations 2024 (SI 2024/102) (as amended) (the "**Securitisation SI**") – the Securitisation SI designated under the DAR the activity of acting as an originator, sponsor, original lender or securitisation special purpose entity ("**SSPE**") in a securitisation and selling a securitisation position to a retail client located in the United Kingdom. Amongst other things, the Securitisation SI:
  - grants powers to the FCA to make rules relating to the securitisation designated activities and introduced a power of direction for the FCA in relation to authorised and unauthorised firms which are subject to the DAR;
  - sets out the definition of what constitutes a "securitisation";

- maintains the regulatory regime for securitisation repositories and third-party verifiers;
- sets out the STS framework for UK STS securitisations;
- prohibits the establishment of SSPEs in high-risk jurisdictions; and
- sets out the due diligence requirements for occupational pension schemes.

- Regulator rules: The firm-facing requirements for the securitisation DAR activities are set out in the Securitisation Part of the PRA Rulebook ("**PRA Securitisation Rules**") and the SECN securitisation sourcebook of the FCA Handbook ("**SECN**").
  - The PRA Securitisation Rules apply to PRA-authorised firms in relation to due diligence, risk retention, transparency, resecuritisation and credit granting requirements.
  - SECN applies to entities who are undertaking securitisation DAR activities (except PRA-authorised firms who must comply with the PRA Securitisation Rules in relation to the above categories and occupational pension schemes who must comply with the due diligence rules set out in the Securitisation SI). The SECN also sets out the STS criteria and rules relating to Third Party Verifiers and Securitisation Repositories.

Regulator rules

The PRA Securitisation Rules and the SECN generally maintained the provisions of the Previous UK SR and aligned the UK regime with some of the EU Securitisation Regulation and technical standards made thereunder that came into effect after 31 December 2020 (IP completion day). The regulators did not make substantial policy changes and introduced some clarifications that market participants have welcomed. We summarised the key issues and differences in our article which can be found by following this link.

FCA or PRA rules - which to apply?

A positive of the UK Securitisation Framework is that most of the firm-facing rules are now in the FCA Handbook or PRA Rulebook. Market participants can now mostly look for all the rules in one place, as opposed to the previous regime where rules were contained separately in "level 1" text and numerous separate technical standards.

However, one drawback that the market has been grappling with is the duplication of some of the rules between the FCA Handbook and PRA Rulebook (plus the due diligence obligations for occupational pension schemes are contained in the Securitisation SI – this is because occupational pension schemes are not subject to supervision by the FCA or PRA).

Generally, whether the risk retainer is authorised by the PRA or not dictates which rules should apply. The below table summarises the position that is required by law, and the market has broadly settled on this approach. However, some transactions have included dual PRA and FCA compliance requirements (even though for some obligations this is not strictly necessary).

Brief recap of key provisions

Due Diligence

- Introduction of a principles-based approach to verifying reporting – the rules no longer require UK investors to obtain prescribed reporting templates from the originator/SSPE (though a UK originator and SSPE still have the obligation to report on the applicable UK templates and similarly for EU originators and SSPEs on EU templates).
- Distinction between primary and secondary market investments – secondary market investors no longer need to verify that the relevant documentation was provided "before pricing", only that final form documents have been disclosed.

Risk Retention

- Permits risk retention of non-performing exposure ("**NPE**") securitisations by reference to 5% of the discounted (acquisition) value of the NPE.
- Permits transfer of the risk retention in the event of the retainer's insolvency.
- Requirement on the retainer to disclose specified information on risk retention in the prospectus or transaction summary (including how it meets the sole purpose test).

Transparency

- Disclosure of documentation "pre-pricing" has been clarified and refers to documentation being available "before pricing or original commitment to invest in draft or initial form".
- Final documentation must be made available 15 days after closing at the latest.
- Disclosure templates remain broadly the same as before.

STS

- Geographical scope – originator and sponsor for non-ABCP (and the sponsor only for ABCP) must be established in the UK.
- Overseas STS – the Treasury can designate other jurisdictions as being STS in the UK.
- EU STS can be considered UK STS until 30 June 2026.
- No synthetic STS permitted in the UK rules (unlike the EU rules).

Retainer	Risk retention	Transparency	Due diligence
Retainer is a UK PRA-authorised firm.	Compliance with the PRA rules only.	Compliance with both PRA and FCA rules. This is because whilst the risk retainer may be a PRA authorised firm, the SSPE will not be and as such the risk retainer has to comply with the PRA rules and the SSPE has to comply with the FCA rules .	Due diligence obligations are an investor obligation, and as such reference to the investors' due diligence rules should refer to SECN 4, Article 5 of the PRA Securitisation Rules and the OPS due diligences rules set out in the Securitisation SI (assuming that each type of investor will be an investor in the securitisation).
Retainer is a UK entity but is not a PRA-authorised entity.	Compliance with the FCA rules only.	Compliance with the FCA rules only.	
Retainer is a non-UK entity.	Non-UK entities are not required to comply with the UK Securitisation Framework, but can contractually agree to do so. Either the FCA or PRA rules (or both) could apply.		

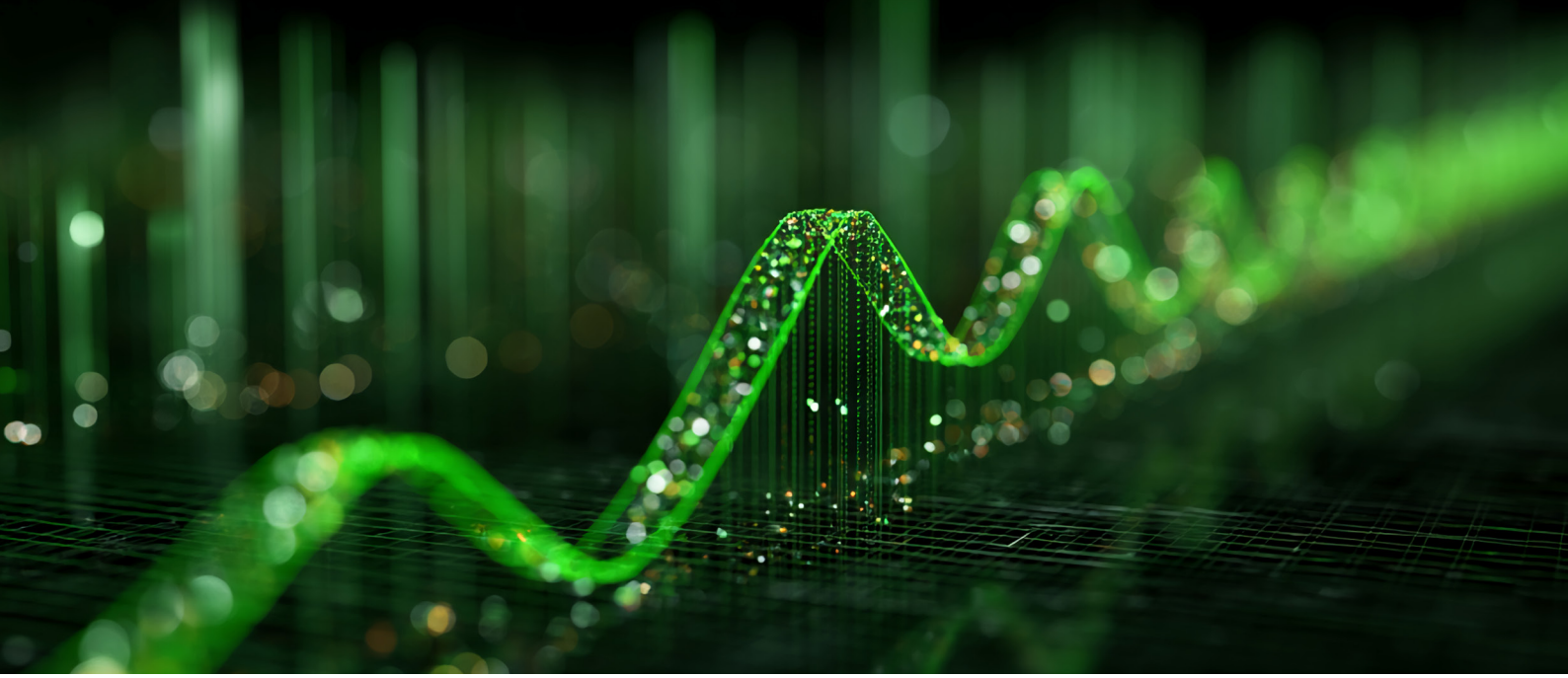
EU divergence and convergence

The UK Securitisation Framework has aligned the regulatory regime in the UK in some respects with the current EU Securitisation Regulation. However, the recent EU consultation papers[1] and joint ESA report[2] suggest further changes which may cause greater divergence between the two regimes, though the UK regulators have said that they will keep in mind the EU changes to the rules when they undertake the further consultation on the UK rules. The table below sets out a summary of the changes to the EU Securitisation Regulation since IP-completion day and some of those rules which the new UK Securitisation Framework has adopted.

We also note that the EU directive on credit servicers and purchasers of non-performing loans[3], which was required to be implemented by EU member states, introduced (amongst other things) certain requirements on servicers (including authorisation of servicers) and purchasers of non-performing loans in the EU.

Amendment to the level 1 text of the EU Securitisation Regulation by Regulation (EU) 2021/557 of 31 March 2021	EU rules extended STS framework to on-balance sheet synthetic securitisation.	UK rules do not permit synthetic securitisation to be STS.
	EU rules removed regulatory obstacles to securitisation of non-performing exposures ("**NPEs**"). Risk retention of NPE securitisation is by reference to the discounted (acquisition) value of the NPE.	UK rules from 1 November 2024 implemented the same approach to risk retention of NPEs.
EU Risk Retention RTS published in July 2023 (Commission Delegated Regulation (EU) 2023/2175 of 7 July 2023)	EU rules permit the servicer to hold the risk retention for NPE transactions in certain circumstances.	UK rules do not permit the servicer to hold the risk retention in any circumstance.
	EU rules permit the transfer of risk retention on insolvency of the retainer or where the retainer is unable to continue acting in that capacity for reasons beyond its control or the control of its shareholders.	UK rules only permit transfer of risk retention on insolvency of the retainer but not where the retainer is unable to continue acting as retainer for legal reasons beyond its control.
	Fees payable to the retainer on a priority basis may not be consistent with the risk retention rules if they create a preferential claim in the securitisation cash flows that effectively declines the retained interests faster than the transferred interest.	UK rules from 1 November 2024 do not explicitly include this provision.

1. European Commission's targeted consultation on the functioning of the EU Securitisation Framework of 9 October 2024 and ESMA consultation on disclosure requirements for private securitisations on 13 February 2025.
2. Joint European Supervisory Authorities' evaluation report on the functioning of the Securitisation Regulation of 31 March 2025.
3. Directive (EU) 2021/2167 of 24 November 2021 on credit servicers and credit purchasers.



STS homogeneity RTS published in November 2023 (Commission Delegated Regulation (EU) 2024/584 of 7 November 2023 which amended the previous EU STS homogeneity RTS)	EU rules permit consumer loans to individuals and corporates to be homogeneous if the originator applies the same credit risk assessment approach.	UK rules from 1 November 2024 introduced the same change regarding consumer loans to individuals and corporates. UK rules also specify that mixed BTL and owner-occupied portfolios are not normally considered homogenous, but can be where underwritten and serviced according to similar standards.
STS sustainability indicators published in March 2024 (Commission Delegated Regulation (EU) 2024/1700 of 5 March 2024)	EU rules permit originators to publish information voluntarily relating to principal adverse impacts on sustainability factors for residential and auto loans.	UK rules do not have an equivalent provision for this.

Next steps

The FCA and PRA plan to consult on further changes to the securitisation rules in the second half of 2025 including, amongst other things, a review of the definition of public and private securitisations, the reporting regime and ESG reporting.

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