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## Norway
## Securitisation

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

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# Norway: 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 is no active securitisation market in Norway for the time being.

Due to specific Norwegian banking regulation currently in force, financial institutions in Norway are not able to effectively securitise their assets absent permissive legislation. In Norway, both lending and the purchase of existing loans are regulated activities subject to license, supervision and capital requirements. These requirements would extend to the securitisation special purpose entity (SSPE) that acquires the underlying financial assets in a traditional securitisation. In addition, transfer of Norwegian consumer loans to an SSPE is subject to active and informed consent from the consumers, which cannot be obtained earlier than 30 days prior to the transfer. Accordingly, a pre-consent to a future transfer embedded into the terms and conditions of the loan when initially granted will not be effective. Absent legislation explicitly removing these restrictions in the context of a securitisation, Norwegian financial institutions are effectively prevented from executing securitisation transactions.

Prior to 2016, Norwegian securitisation rules existed but were viewed as inflexible and inadequate to promote an active securitisation market in Norway. However, following the implementation of Regulation (EU) 2017/2402 (the Securitisation Regulation) in the EU, the Norwegian Ministry of Finance (MoF) published a legislative proposal on 4 December 2020 to implement expected corresponding EEA rules into Norwegian law by cross-reference in Norwegian legislation. The legislative proposal was passed by the Norwegian Parliament on 23 April 2021 but has not entered into force as of March 2025. However, on 7 February 2025, the Ministry of Finance submitted a proposal to the Parliament for approving the inclusion in the EEA agreement of the original Securitisation Regulation as amended by Regulation (EU) 2021/557 (providing for e.g. synthetic STS securitisation), Regulation (EU) 2017/2402 as amended by Regulation (EU) 2021/558 (amending the Capital Requirements Regulation (or CRR) for securitisation purposes) and Commission Delegated Regulation 2018/1221 (amending Solvency II for securitisation). Parliament is expected to approve these changes during the spring of 2025, meaning that Norway may have an effective securitisation regulation in place shortly thereafter. The new legislation will allow Norwegian financial institutions to securitise financial assets under the same legal framework as other financial institutions in the EU.

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

Except for resecuritisation, which is banned under the Securitisation Regulation, the recently adopted legislation does not contain provisions that prevent certain assets from being securitised. However, the contract governing the underlying asset may impose restrictions on its assignment, thus prohibiting the asset from being securitised (eg contractual limitations on assignment in a loan agreement).

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

The recently adopted legislation amends the Norwegian Financial Undertakings Act of 10 April 2015 to permit securitisation by financial undertakings, including banks and other credit institutions. The new national legislation incorporates the Securitisation Regulation by reference, meaning that the Norwegian securitisation legislation will mirror the legislation for the EU in this area. It is expected that the Commission delegated and implementing acts to the Securitisation Regulation will be implemented in Norwegian law once the adopted legislation enters into force.

The legislation applies to securitisation as defined in Article 2(1) of the Securitisation Regulation, which captures both traditional and synthetic (on-balance sheet) securitisations.

## 4. Give a brief overview of the typical legal structures used in your jurisdiction for

 

## securitisations and key parties involved.

There is no active securitisation market in Norway for the time being and thus there are no common structures established for the securitisation of different types of financial assets.

It is not expected that the type of underlying financial assets will determine the general structure of securitisation transactions. Rather, we expect the choice of legal structure to primarily depend on the rationale for carrying out the transaction (eg whether it is carried out for funding and/or capital or risk management purposes). Further, the new legal framework does not, with certain exceptions, differentiate between different types of underlying financial assets.

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

The Norwegian Financial Supervisory Authority (FSAN) is the competent authority under the Securitisation Regulation and the CRR and will be responsible for the supervision of the Norwegian securitisation legislation and securitisations' effect on capital requirements for prudentially regulated entities.

## 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)?

There are no specific limitations in the recently adopted legislation with regards to the nature of entities that may participate in a securitisation transaction.

In Norway, lending and other forms of financing by extension of credit are regulated and licensed activities. The purchase of existing loans is also a licensable activity. Pursuant to the new legislation, SSPEs are exempted from capital and licensing requirements. Other entities involved in a securitisation are subject to the general regulatory requirements in the Norwegian legislation.

When the originator in a securitisation is a financial institution, the servicer of a securitised loan portfolio must be a bank, a non-banking credit institution or a finance company. It is worth noting that under existing Norwegian financial regulations, an originator of a loan will always be a financial institution.

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

The recently adopted Norwegian securitisation framework includes the concept of 'simple, transparent and standardised' securitisation by virtue of implementation of the Securitisation Regulation. There are no additional local law requirements in order to qualify for such designation.

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

Except for different transparency requirements in Article 7 of the Securitisation Regulation, neither the Securitisation Regulation, nor domestic legislation defines or distinguishes between private securitisations and public securitisations.

With regards to prospectus requirements, we note that Regulation (EU) 2017/1129 (the Prospectus Regulation) has been implemented in Norway. The application of the Prospectus Regulation to a securitisation in Norway depends on whether it involves the offering of securities to the public (the 'public offer' trigger), or whether securities are admitted to trading on an EEA regulated market (the 'listing' trigger).

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

Except for the requirements set out in the Securitisation Regulation, and, to the extent applicable, the Prospectus Regulation, there are no specific local law registration, authorisation or other filing requirements in Norway in relation to securitisations.

## 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?

Under the recently adopted national legislation, the debtors under securitised loans shall receive information on the identity of the SSPE and the servicer, as well as their respective rights and obligations against the debtor. The information must be provided at least three weeks

 

before the loans are sold and transferred from the originator to the SSPE. However, the proposal does not afford the debtors any right to object or opt out of the securitisation.

Pursuant to the Norwegian Act on Debt Information, Norwegian financial institutions are required to report certain information about its exposures to an authorised debt registry institution. In the recently adopted legislation, this reporting requirement is placed on the servicer of the securitised portfolio (which typically will be the originator), because SSPEs are not financial institutions and thus not subject to the reporting requirement.

There are certain disclosure requirements in the Securitisation Regulation (particularly Article 7) and Regulation (EU) 575/2013 (CRR). A public securitisation is subject to the Prospectus Regulation (see question 8).

It is expected that the Commission delegated and implementing acts to the Securitisation Regulation, which include relevant reporting and disclosure templates, will be implemented in Norwegian law once the Securitisation Regulation enters into force in Norway.

Regulation (EU) 1286/2014 (PRIIPS) has not yet been implemented in Norway.

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

The Securitisation Regulation requires the originator, sponsor or original lender to comply with certain risk retention requirements. National legislation does not contain specific regulation regarding credit risk retention above and beyond what is set out in the Securitisation Regulation.

In general, the Securitisation Regulation requires that a minimum of 5% of the net economic credit risk must be retained.

The Securitisation Regulation sets out an exhaustive list of five acceptable risk retention methods, where the choice of method will, among other things, depend on whether the transaction involves significant risk transfer under the CRR or not:

- Vertical slice: retention of not less than 5% of the nominal value of each class of notes sold to investors.
- Revolving securitisations: retention of the originator's interest in revolving assets of not less than 5% of the nominal value of each of the underlying assets.
- Random selection: retention of an interest in randomly selected on-balance sheet assets equal to not less than 5% of the nominal value of the portfolio, provided that the selection is made from a pool comprising not less than 100% of the underlying assets.
- First loss tranche: retention of the most subordinated tranche in the structure.
- First loss exposure: retention of the first loss exposure of not less than 5% of the nominal value of each underlying asset.

The net economic interest cannot be hedged, which shall ensure that the originator, sponsor or original lender shares the losses when the underlying assets fail to perform.

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

Article 5 of the Securitisation Regulation requires institutional investors to conduct a minimum standard of due-diligence measures before investing. This includes comprehensive and thorough knowledge of the securitisation position and its underlying exposures, including the exposure type, proportion of overdue loans, default rates and collateral type. The investor must also monitor the information on the exposures underlying the positions on an ongoing basis and have written policies and procedures in place for the risk management of its positions.

Upon request by the FSAN, institutional investors must be able to demonstrate comprehensive and thorough understanding of the securitisation position and its underlying exposures. National legislation does not impose further regulatory obligations to conduct due diligence before investing above and beyond what is set out in the Securitisation Regulation.

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

The standard penalties in the Norwegian Financial Undertakings Act will apply to breaches of the securitisation legislation. Primarily, breaches are sanctioned with fines, but in particularly aggravating circumstances breaches may also be sanctioned by imprisonment. The sanctions may be directed at both the involved legal entities and the responsible individuals.

## 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?

Norwegian corporate law is not particularly well-suited to facilitate the use of Norwegian SSPEs in securitisation transactions. The expectation is therefore that Norwegian financial institutions will prefer to use SSPEs registered outside of Norway in securitisation transactions, eg SSPEs registered in Luxembourg or Ireland.

The Securitisation Regulation lays down a general framework for securitisation and sets out certain requirements for SSPEs used in securitisation transactions, including, among other things, that:

- The SSPE must be a corporation, trust or other entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations; and
- the activities of the SSPE shall be limited to those appropriate to accomplishing the securitisation for which it has been established and its structure shall allow isolating the obligations of the SSPE from those of the originator.

An SSPE cannot be established in a third country listed as a high-risk and non-cooperative jurisdiction by the Financial Action Task Force or in a third country that has not signed an agreement with an EU member state to ensure that that third country fully complies with tax good-governance standards.

In Norway, lending and other forms of financing by extension of credit (including acquisition of existing loan portfolios) are regulated and licensed activities. However, as mentioned under question 6, SSPEs will be exempted from capital and licensing requirements under the new securitisation legislation.

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

Norwegian insolvency law does not have particular designs applicable to securitisation transactions. Since there is no active securitisation market in Norway for the time being, there are no common structures or measures utilised by securitising entities.

Norwegian insolvency law provides that an insolvency estate, as a starting point, may only seize assets that belong to the insolvent debtor (ie assets in the ownership of the insolvent debtor). However, this starting point is modified by legal perfection requirements which may entitle the insolvency estate to seize assets which have been sold by the debtor if the acquirer has failed to obtain legal perfection for its acquisition of the assets. In this context, the assets of the acquirer would be 'bankrupcty remote' if it has taken all necessary steps to ensure that its rights to the assets are protected (ie legally perfected) in case of the seller's bankruptcy.

A fundamental prerequisite for ensuring that the SSPE is bankruptcy remote, is that the assets are transferred to the SSPE by way of a valid and binding transfer agreement. The insolvency estate will not be bound by a pro forma transfer agreement, and a transfer which is not on arm's length terms, and which unreasonably favours the SSPE at the expense of other creditors of the seller, may on certain conditions be overturned in bankruptcy.

To ensure that the assets of the SSPE are bankruptcy remote, the originator must transfer underlying financial assets to the SSPE following a 'true sale' transaction. For a transfer of monetary claims to be deemed a 'true sale' transaction, the originator must transfer the substantial risks associated with the underlying claims to the SSPE and the transaction must be undertaken on an arm's length, solvent basis. Following a 'true sale' transaction, the SSPE becomes the owner of the underlying assets and, subject to legal perfection (see question 17), acquires the full legal title to the assets.

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

There is no active securitisation market in Norway for the time being, but these are expected to be the same as in the EU when the Securitisation Regulation enters into force in Norway.

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

There are no particular requirements that must be observed to ensure a valid transfer of financial assets between the parties to such transfer. However, certain actions are required to achieve legal perfection. The type of action required depends on the asset in question.

Legal perfection for assignment of non-negotiable monetary claims (such as consumer loans) under Norwegian law is achieved by notifying the obligors of the assignment. If the monetary claim is secured, assignment of the relevant security from the originator to the SSPE may be subject to a separate perfection requirement

 

under Norwegian law.

Pursuant to the new securitisation legislation, each individual obligor under the securitised loans must be notified three weeks ahead of the transfer of the loans to the SSPE. The obligor is not afforded any right to object to or opt out of the securitisation, and this notification requirement comes in addition to any formal requirements for legal perfection of the transfer of non-negotiable monetary claims and any related security.

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

In the event of the originator's insolvency, the administrator of the insolvency estate may invoke certain general overriding claw-back provisions in Norwegian insolvency law. In general, these are only applicable if the transaction is deemed to be objectively unfair to the other creditors of the insolvent party.

In the event of the originator's insolvency, the transfer of assets may also be challenged by the administrator if the sale has not been duly perfected (see question 17) or if the transfer of the underlying financial assets can be re-characterised as a secured loan transaction (see question 15 on the requirements for a transfer to be deemed a 'true sale' transaction).

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

Financial institutions are subject to a strict duty of confidentiality towards their customers. In general, this means that financial institutions as originators are prohibited from disclosing information about the obligors under the underlying loans to third parties without prior consent from the relevant obligors. There are no exemptions from the duty of confidentiality in the legislation on securitisation.

Data protection in Norway is governed by Regulation (EU) 2016/679 (GDPR) and by the Norwegian Personal Data Act, which both apply to the gathering and processing of personal data. These rules will also apply to securitisation transactions.

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

The activities of rating agencies in Norway are regulated by Regulation (EU) 1060/2009 (CRA Regulation), Regulation (EU) 513/2011 (CRA 2) and Regulation (EU) 462/2013 (CRA 3), which are all incorporated by reference in Norwegian legislation. The FSAN is the competent authority under the CRA Regulation.

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

The Norwegian legislation implementing the Securitisation Regulation does not address the tax treatment of securitisation transactions. Currently, there is no active securitisation market in Norway and historically the activity in the Norwegian securitisation market has been low mainly due to an impractical framework. Thus, there is very little guidance and certainty on the tax treatment of securitisation transactions in Norway. Some general considerations are set out below:

In Norway, financial services are generally exempt from Norwegian value added tax (VAT). The exemption includes the sale of receivables and consequently also the transfer of the underlying financial assets from the originator to the SSPE. Furthermore, Norwegian income tax will generally not apply to the SSPE's income from the acquired underlying financial assets, provided that SSPE is located outside of Norway.

Effective from 1 July 2021, a 15% withholding tax applies to interest payments made to related parties in low tax jurisdictions. Payments to entities genuinely established and conducting real economic activity in an EU/EEA member state are exempt from such withholding tax.

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

There is no active securitisation market in Norway for the time being. In general, there are no restrictions on global or cross-border transactions. The exemption for SSPEs from the Norwegian banking licensing requirement applies equally to SSPEs located outside of Norway.

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

The recently adopted legislation on securitisation in Norway has been well received by representatives from

 

the Norwegian financial industry. In particular, when comparing the new framework with the previous securitisation framework in Norway, it has been developed with a view to make securitisation feasible in practice and not only on paper. It remains to be seen whether the new framework is sufficiently attractive to develop a substantial securitisation market in Norway.

The new national legislation implements the Securitisation Regulation by reference with only a few amendments to existing Norwegian legislation. More detailed regulations are likely to be passed at a later stage when a securitisation market starts to develop in Norway. For market participants interested in carrying out securitisation transactions under the new framework, the current lack of more detailed regulation may cause some unwanted unpredictability. Also considering the limited precedents in Norway in this area, it is difficult to predict with certainty how competent authorities will interpret and apply relevant legislation on securitisation transactions to come. In any event, future national legislation will need to observe the requirements of the Securitisation Regulation and any Commission delegated or implementing acts adopted thereunder, if and to the extent incorporated into the EEA Agreement. This gives market participants some level of certainty in terms of what to expect from the Norwegian legislator and other relevant authorities.

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

If the underlying receivables are secured, transfer of the relevant security to the SSPE may require the security to be re-registered in the name of the SSPE in order to obtain legal perfection. Such registration is subject to a fee upon filing to the relevant register. A new maximum fee for electronic mass-registration of multiple title transfers to security rights in the Norwegian Mortgaged Movable Property Register (the Property Register) is expected to be introduced in Norway, similar to what is already in place for mass-registration of title changes to mortgages registered in the Norwegian Land Register for real property.

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