



**COUNTRY
COMPARATIVE
GUIDES 2024**

The Legal 500 Country Comparative Guides

Saudi Arabia

SECURITISATION

Contributor

White & Case



Debashis Day

Partner | debashis.dey@whitecase.com

Greg Pospodinis

Local Partner | greg.pospodinis@whitecase.com

Nezar Al Abbas

Local Partner | nezar.al.abbas@whitecase.com

Salvia Matonyte

Associate | salvia.matonyte@whitecase.com

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

For a full list of jurisdictional Q&As visit legal500.com/guides

SAUDI ARABIA SECURITISATION



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

Securitisations are not a typical financing technique in the Kingdom of Saudi Arabia (the “**KSA**”) market for various reasons, including the fact that the KSA legal framework did not previously provide sufficient legal certainty for investors with respect to sale of receivables, bankruptcy, security and enforcement of contracts (among other things). In addition, the Shari’a principles underlying KSA law create complexity on the ability to transfer receivables in a manner that can satisfy such principles.

In recent years the legal framework in the KSA has taken incremental steps towards offering more certainty to the legal position for structures underlying securitisation through the introduction of the laws further detailed in our response to question 3. This, coupled with an increase in the requirements from new originators and the entry into the market of more experienced investors, has led to an uptick in interest in securitisation as a finance method in the KSA market.

The market is still in the early stages of development, but there has been some activity in asset classes such as consumer receivables and historically, pilot transactions dealing with real estate and fleet inventory have been attempted, but have had limited impact on the market.

At present, there are only examples of private securitisations with small numbers of club investors in the KSA market. There have been no public securitisations.

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

There is no specific legal prohibition or restriction on the

types of assets that can be securitised in the KSA but the nature of the assets may be restricted by other ancillary factors such as financial regulation for services, restrictions on ownership of land, etc.

If the transaction is intended to be Shari’a compliant, then there may be Shari’a restrictions related to the nature of the assets being considered tangible, intangible or debt.

Asset classes that have previously been securitised in the KSA include consumer receivables and historically, pilot transactions dealing with real estate and fleet inventory have also been attempted.

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

There is no specific legislation governing securitisation in the KSA and no ‘true sale law’.

Notwithstanding the above, there does exist certain key legislation in the KSA which enables securitisation transactions and supports, among other things, the transfer of receivables, including:

- Royal Decree no. M/191 dated 29/11/1444H (corresponding to 18 June 2023) (the “**KSA Civil Transactions Law**”);
- Royal Decree number M/50 dated 28/05/1439 1439 (corresponding to 13 February 2018) (the “**KSA Bankruptcy Law**”); and
- Royal Decree No. M/94 dated 15/8/1441H (corresponding to 8 April 2020) (the “**KSA Movables Law**”).

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

There have been so few securitisations in the market

that it is not possible to point to a “typical” legal structure. As noted above, the key principles of KSA law now permit the transfer of receivables and so we would expect true-sale structures (with adaptations for local law conditions) to become more common.

It is worth noting that as at the start of 2024, there are no providers of third party servicing in the KSA market and so the originator would likely need to be appointed by the SPV to act as servicer of the underlying assets.

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

There is no express regulation published that regulates securitisations in the KSA, however the Central Bank of Saudi Arabia (commonly known as “**SAMA**”) has implemented Basel III in KSA. Basel III rules do prescribe certain types of limits and procedures that would govern securitisation conducted by a regulated institution. As of the start of January 2024, SAMA had not yet published any such express regulation implementing Basel III rules in relation to securitisation.

If the securitisation involves the offering of securities (whether privately or publicly), the KSA Capital Markets Authority (the “**CMA**”) would be the competent regulatory authority who would be responsible for reviewing the transaction.

If the underlying assets of the securitisation are regulated, then originators of those assets (and possibly the servicers) will be regulated.

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)?

With respect to regulation of SPVs, please see our response to question 14.

Otherwise, there are no regulatory or other limitations in the KSA on the nature of entities that may participate in a securitisation (either on the sell side or the buy side).

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

The KSA does not have a concept of “simple, transparent and comparable” securitisation or similar.

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

The KSA does not distinguish between private and public securitisations.

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

If the originator is regulated by SAMA, then it must obtain the approval of SAMA for the securitisation.

Whilst not specific to securitisation, any collateralisation or security coverage of receivables pursuant to the KSA Movables Law needs to be registered on the KSA Movables Security Register in order to be effective against third parties.

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?

There are no disclosure requirements for securitisations and no reporting templates that are currently required to be used.

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

There is no legislation in the KSA requiring securitising entities to retain risk. However, we would expect certain securitisations in the KSA to fall within the remit of the EU, UK or US risk retention rules, depending on the location of investors and the jurisdiction of incorporation of the special purpose vehicle.

Whilst not a legal or regulatory requirement, originators would likely be contractually required to retain a portion of the exposures for credit enhancement purposes. This can be structured in many of the ways typically seen in other jurisdictions.

12. Do investors have regulatory

obligations to conduct due diligence before investing?

There is no securitisation-specific legal or regulatory requirement for KSA-based investors to conduct due diligence before investing. Investors would typically conduct due diligence on the underlying assets and the originator, however, this is an investor driven requirement rather than a legal or regulatory obligation.

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

There are no specific securitisation-related regulatory obligations on securitisation participants and as such no specific penalties apply.

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?

The CMA has published regulations for establishing regulated special purposes entities ("**CMA SPEs**") pursuant to the provisions of the Rules for Special Purposes Entities issued by the Capital Market Authority of the Kingdom (the "**CMA SPE Rules**"). Under the CMA SPE Rules, CMA SPEs can be incorporated for the purposes of issuing debt securities or fund units. The CMA SPE Rules set out a detailed legal framework for CMA SPEs, including on the ownership structure and assets of CMA SPEs. However, these vehicles are subject to significant regulation by the CMA and potentially SAMA and, so far as we are aware, have seldom been used. In addition, please see our response to question 15 with respect to bankruptcy remoteness of CMA SPEs.

Consideration could be given to establishing a single person company under the KSA companies law, however, the bankruptcy remoteness structure would need to be examined.

In light of the issues raised above, we expect it may be more attractive for international investors to use an SPV established in another jurisdiction outside of the KSA. However, more detailed local law analysis (also in particular around the issue of transferring data from the

KSA to such an SPV) and tax analysis needs to be undertaken for the purposes of exploring and assessing the suitability such jurisdictions.

15. How are securitisation SPVs made bankruptcy remote?

A CMA SPE benefits from a degree of statutory bankruptcy remoteness where commencement of bankruptcy proceedings against a CMA SPE are subject to the approval of the CMA. However, the CMA SPE Rules do not provide full bankruptcy remoteness as bankruptcy proceedings could still be initiated provided that the CMA permits such proceedings to be initiated. As these rules are currently untested, it is unclear in what circumstances the CMA may permit proceedings to be initiated. Contractual methods can be used in addition, however, the enforceability of these methods is also untested and therefore uncertain.

In the absence of more certain legislation providing for the bankruptcy remoteness of CMA SPEs, it is not possible to say that a CMA SPE would be completely bankruptcy remote.

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

We would expect the types of credit support used in the KSA to be the same as those used in other jurisdictions where securitisation is commonly used. This includes over-collateralisation and excess spread.

If the transaction is intended to be Shari'a compliant, consideration needs to be given to the type of credit support used. For example, subordinated tranching where all classes share exposure to common assets may be viewed by KSA Shari'a scholars as being non-compliant with Shari'a principles.

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

The concept of a true sale is not specifically codified under KSA law for the purpose of securitisation. However, the KSA Civil Transaction Law provides for the assignment of rights by an obligee to a third party. The KSA Civil Transactions Law may therefore be used to effect the transfer of receivables.

Pursuant to the KSA Civil Transactions Law, an obligee may transfer to a third party their rights against an obligor, unless the statutory provisions, the agreement

or the nature of the obligation requires otherwise. The consent of the obligor is not required to establish a valid assignment between the assignor and the assignee.

However, the assignment is only effective against the obligor or a third party if notice is given to the obligor.

The receivables are transferred together with all related rights.

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

The KSA Bankruptcy Law provides that certain transactions entered into 12 months prior to the date of the commencement of a bankruptcy procedure with any party and 24 months prior to the date of the commencement of a bankruptcy procedure with 'Related parties' may be held to be void upon an application of an interested party. Such transactions include onerous contracts, contracts with lack of or unfair consideration and transactions entered into with preference to a particular creditor. Notably the KSA Bankruptcy Law states that any decision to set aside a transaction under the circumstances above shall not affect the rights acquired by third parties in good faith.

There is some possibility that a KSA court may seek to examine a transfer of assets to consider whether it is unenforceable. However, such risk is not unusual and is fairly common in many insolvency regimes. In addition, such a risk is mitigated by the fact that the period of application is relatively limited and that such powers of the court only apply in specific circumstances (i.e., transactions at an under value, one sided transactions, etc.). Given that a transfer of assets in a typical securitisation should meet the necessary tests as to not fall within the listed categories, a scenario where a KSA court would deem such a transfer of assets to be unenforceable should not typically arise. Nevertheless, given that KSA bankruptcy legislation is relatively new and largely untested, and there is no judicial precedent (or indeed any relevant judicial decisions) that would assist in the interpretation of the relevant law or the assessment of the risks relating this issue, it is not possible to fully assess the probability of such risks materializing.

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

The KSA Personal Data Protection Law (the "PDPL") was

first issued in September 2021 and came into force in September 2023, along with the Implementing Regulation of the PDPL (the "**Implementing Regulation**") and the Regulation on Personal Data Transfer outside the Kingdom (the "**Data Transfer Regulations**"). Those entities subject to the PDPL have a grace period of one year, until September 2024, to comply with the PDPL.

The PDPL applies to the processing of personal data relating to individuals in the KSA and will (upon the expiry of the grace period) provide certain protections to obligors in a securitisation, even where the processing is by a party outside the KSA.

The Data Transfer Regulations set out the circumstances in which a data controller may transfer personal data to parties outside the KSA and provides, among other things, that such transfers should be limited to the minimum necessary to achieve the purpose of the transfer and it must not impact the privacy of data subjects or the level of protection guaranteed to it under the PDPL.

20. Is the conduct of credit rating agencies regulated?

Yes, the conduct of credit rating agencies is regulated in the KSA.

Any entity carrying out rating activities in the KSA must be authorised by the CMA. Such an entity must either be incorporated in the KSA or be a foreign credit rating agency authorised or registered in a jurisdiction whose regulatory standards and requirements are at least equivalent to those of the CMA.

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

The standard VAT rate in the KSA is 15%. Certain services, including the transfer of debt are exempt from VAT.

Payments made from a resident party in the KSA to a non-resident party for services performed may be subject to withholding tax. The rates vary based on the type of service and whether the beneficiary is a related party.

The KSA does not currently levy stamp taxes. However, registration fees may be payable in certain instances such as mortgage registration fees and security registration fees, which can range from *de minimis*

amounts to a notable percentage of the value of the underlying asset depending on the nature of the asset.

There may be withholding tax applicable to flows of income derived from sources in KSA. Double tax treaty analysis would therefore be required in some instances.

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 specific legal or regulatory framework which seeks to encourage global or cross-border transactions, however, there is a significant volume of cross-border transactions involving KSA originators (in other related finance products). This is due in large part to the development of the KSA legal framework in recent years and the local currency being pegged to the United States dollar.

Although securitisation transactions in the KSA have been rare, there have been many finance transactions with cross-border elements. Cross-border elements may include international investors, SPVs incorporated in other jurisdictions, international third party service providers and documentation governed by English law.

23. To what extent has the securitisation market in your jurisdiction transitioned from IBORs to near risk-free interest rates?

Due to a lack of historic securitisation transactions, there has not been a need to transition in any formal way from IBORs to near risk-free rates. In conventional debt capital markets, we are observing a shift towards risk-free rates (SOFR, SONIA, €STR) which are backward-looking

benchmarks. However, in Islamic capital markets, backward-looking benchmarks are less common in Shari'a compliant sukuk structures (such as Ijara and Murabaha) which typically require the profit amount payable to be determinable at the beginning of the relevant profit accrual period, therefore requiring a forward-looking rate to be selected. As a result, we have observed the use of Term SOFR (which is a forward-looking rate) in Islamic capital markets transactions that are based on a hybrid Ijara/Murabaha structure.

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

The KSA securitisation market and the majority of the laws and regulations which are relevant to it are both still in their development stage and in the case of a number of the laws, largely untested. There are therefore constant developments which tend to improve the ability to securitise in the KSA, for example the recent coming into force of the KSA Civil Transactions Law.

It would be beneficial to the domestic market to have a robust securitisation law which codifies and clarifies the key elements of securitisation, including bankruptcy remoteness of SPVs and true sale.

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

Please see our response to question 17 with respect to giving notice to obligors of the transfer. There are no other specific filings or formalities that need to be satisfied in order to constitute a true sale of receivables.

Contributors

Debashis Day
Partner

debashis.dey@whitecase.com



Greg Pospodinis
Local Partner

greg.pospodinis@whitecase.com



Nezar Al Abbas
Local Partner

nezar.al.abbas@whitecase.com



Salvia Matonyte
Associate

salvia.matonyte@whitecase.com

