Legal 500
Country Comparative Guides 2025

Spain
Securitisation

Contributor

DLA Piper

Andrés Lorrio

Partner, Head of Capital Markets | andres.lorrio@dlapiper.com

Diego Sánchez

Associate, Capital Markets | diego.sanchez@dlapiper.com

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

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

Spain: Securitisation

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

As per the *Securitisation Data Report Q3* 2024, published by the Association for Financial Markets in Europe, by the end of September 2024 Spain ranked third in total outstanding volume and fifth in placed issuance among EU securitisation markets.

Data from the Spanish National Securities Market Commission (*Comisión Nacional del Mercado de Valores* or **CNMV**) shows that EUR13.6 billion in asset-backed securities were issued on the Spanish official secondary markets by the end of September 2024. Credit institutions remain the top originators.

Residential mortgage-backed securitisations have been pre-eminent in the Spanish market. In 2024, consumer loans were the most securitised assets, backing 4 of the 15 deals disclosed. Mortgage loans and corporate loans followed, backing 3 deals each.

In the private deals space, ABCP programs, trade receivables and NPLs are the most common underlying assets.

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

The only assets transferable to securitisation funds under Title III of Law 5/2015, of 27 April (**Law 5/2015**) are receivables and credit claims owned by the originator. These receivables can be existing or future (the latter when supported by underlying agreements and/or measurable revenues). However, real estate assets and *in rem* rights over assets may also be acquired as a result of foreclosure proceedings. They may also be acquired through debt-for-asset transactions.

Resecuritisations, or securitisations with at least one securitisation position in their underlying, are banned under Regulation (EU) 2017/2402 (the **Securitisation Regulation**).

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

Spanish securitisation transactions are governed by the following set of rules:

a. EU regulations
   i. The Securitisation Regulation
   ii. Regulation (EU) 2017/1129 (the **Prospectus Regulation**), where the notes are listed in a regulated market
   iii. Regulation (EU) 575/2013 (**CRR**), where the originators are credit institutions
b. Domestic regulations
   i. Law 5/2015 establishes the domestic legal framework for securitisations
   ii. Law 6/2023, of 17 March (the **Securities Markets Act**), together with its implementing regulations, governs the issuance of notes in Spanish capital markets
   iii. Order EHA 3536/2005, of 10 November, determines the future receivables that may be incorporated into securitisation funds and establishes the conditions for their assignment
   iv. Circular 4/2017 of the Bank of Spain, of 27 November, whose Rule 23 establishes the criteria for derecognising securitised financial assets from the originator's balance sheet in cash securitisations
   v. Royal Decree-Law 24/2021, of 2 November – **RDL 24/2021** – governing mobilisations of mortgage loans by credit institutions
   vi. National and regional consumer laws

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

Securitisations in Spain must be performed through securitisation special purpose entities called securitisation funds (*fondos de titulización* or **FTs**), which may be structured as follows:

a. FTs may be public or private (see question 8 below).
b. FTs may be subject to the Securitisation Regulation or not, in this latter case if they are structured under Law 5/2015 but the credit risk is not tranched.

c. FTs may be structured with open or closed assets and liabilities, or any combination of both.
d. FTs may be organised in compartments, which are managed and liquidated independently.
e. FTs are liquidated following the specific provisions in the deed of incorporation and general principles of Spanish securities markets regulations.

Securitisations of Spanish assets are rarely structured using foreign SPVs. This is due to practical difficulties and costs. The use of foreign SPVs is driven by tax reasons at investor end and it often involves incorporating a Spanish private FT.

Key parties in a Spanish securitisation typically include:

a) Originator or sponsor: assigns receivables to the FT in exchange for cash consideration (price) and the excess spread (if any). They usually fund the FT's startup costs. Multi-originator structures are permitted.

b) FT: a separate estate (SPV) with no legal personality and null net asset value. Its assets are receivables assigned by the originator or the sponsor. Its liabilities are the securitisation notes issued and/or other debt granted by third parties (if any) and the operational costs.

c) FT´s management company (*sociedad gestora de fondos de titulización* or **ManCo**): a regulated entity with the form of a public limited company. Its sole purpose is to incorporate, manage, and legally represent FTs.

d) Servicer: entity entrusted with the management of the underlying assets. ManCos are legally obliged to manage the assets, though, in practice, they usually subcontract the servicing to the originator or another servicer through a servicing agreement.

Servicing is expected to become a regulated activity in Spain soon since the transposition deadline for Directive (EU) 2021/2167, on credit servicers and credit purchasers, ended on 29 December 2023. The legislative processing of transposing this Directive has not progressed in 2024.

We must note, however, that Directive 2021/2167 will not apply to FTs (article 2.4) nor the servicing of loans by credit institutions (article 2.5).

e) Arrangers/underwriters: these are credit institutions or investment firms. They structure the transaction, market and distribute the securitisation notes to investors, and underwrite the securitisation notes (optional).

Placement of securities is a regulated activity under the Securities Markets Act. Entities acting as arrangers need to be registered with the CNMV or the Bank of Spain.

f) Investors: usually institutional investors and those permitted by the Securitisation Regulation under certain conditions.

g) Meeting of creditors (optional): It is a decision-making body acting in the best interests of investors.

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

Securitisation in Spain comes under the supervisory and disciplinary regime of the CNMV, whose duties in this field relate to the following:

a. Authorisation and registration of ManCos and FTs (in private FTs this process consists of an *ex-post* assessment of compliance).
b. Compliance with due diligence, risk retention and disclosure requirements under the Securitisation Regulation by originators which are not supervised by the Bank of Spain.
c. Compliance with the framework for simple, transparent and standardised (STS) securitisations.

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)?

See question 4 above.

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

STS securitisations are regulated at EU level exclusively under the Securitisation Regulation.

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

Yes. The main differences are:

a. Public securitisations are those which are listed in regulated markets. FTs must follow the incorporation process prescribed in Law 5/2015, that is:
    i. Filing of a written authorisation request with the CNMV.
    ii. Submission to and prior registration with the CNMV of the following documents:

   a. the deed of incorporation of the FT
   b. supporting documentation of the assets to be pooled in the FT
   c. any other supporting documentation necessary for the incorporation of the FT and the creation of the compartments (if any)
iii. Submission of the agreed-upon-procedures (AUP) review on the securitised assets, issued either by the ManCo or an independent expert. This requirement may be waived depending on the structure and circumstances of the transaction.
iv. Approval and registration of a prospectus with the CNMV (complying with the Prospectus Regulation).

b. Private securitisations are those which are placed privately (unlisted or listed in a multilateral trading facility (MTF) called *Mercado Alternativo de Renta Fija* or **MARF**) or set up by a single investor/financier. These FTs are given access to a fast-track registration process, in which the deed of incorporation of the FT is submitted to the CNMV once it has been notarised and the transaction documents have been executed. Previous consultation with the CNMV is advisable, particularly on complex transactions. If the securitisation notes are to be listed in the Spanish MTF, an information memorandum (*documento informativo*) needs to be registered with MARF. The CNMV does not need to authorise the information memorandum.

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 addition to the requirements set out in questions 6 and 8 above, it must be noted that registration of FTs in the commercial registry is voluntary. However, its annual accounts should be deposited with the CNMV.

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?

Participants in Spanish securitisations must meet disclosure requirements at EU and domestic levels, for both public and private deals:

a. Public information. ManCos must disclose the following on their website for each of the FTs they manage:
   i. deed of incorporation and, where appropriate, subsequent amendment deeds;
   ii. prospectus and any supplements thereto (for public FTs) or an information memorandum (*documento informativo*) if registered with MARF; and
   iii. annual and quarterly reports.
b. Disclosure to CNMV upon transfers of receivables:
   i. originator's audited annual accounts for the previous two years (if practicable);
   ii. originator's annual reports must detail the transfers of receivables (current or future) of the relevant year;
   iii. transfers of receivables must be in written form; and
   iv. in revolving securitisations, each additional transfer of assets must be notified by the ManCo to the CNMV.
c. Disclosure to CNMV and investors before pricing. FTs must disclose the following information:
   i. all underlying documentation that is essential to understand the transaction;
   ii. a transaction summary (where no prospectus is drawn up);
   iii. STS notification (if applicable).
d. In public securitisations, relevant reporting entities must disclose information to securitisation repositories. The repositories keep track of the disclosures.

Standardised reporting templates were introduced under Commission Implementing Regulation (EU) 2020/1225.

FTs structured outside the scope of the Securitisation Regulation (ie through single tranche securitisations) do not need to comply with c) and d) above.

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

In the absence of specific risk retention provisions in Law 5/2015, article 6 of the Securitisation Regulation and Commission Delegated Regulation (EU) 2023/2175 requires the originator, sponsor or original lender to retain on an ongoing basis a material net economic interest of not less than 5% of the nominal value of the securitisation, measured at origination by reference to the notional value for off-balance-sheet items.

The following risk retention procedures are permitted:

a. retention of not less than 5% of the nominal value of

each transferred tranche;
b. retention of the originator's interest of no less than 5% of the nominal value of each of the securitised exposures (in revolving securitisations or securitisations of revolving exposures);
c. retention of randomly selected exposures equivalent to not less than 5% of the nominal value of the securitised exposures, where the exposures would otherwise have been securitised and the number of potentially securitised exposures is not less than 100 at origination;
d. retention of the first loss tranche and, where the retention does not reach the 5% threshold, other tranches having the same or a more severe risk profile than those sold to investors and not maturing any earlier than those sold to investors, until the 5% threshold is met;
e. retention of a first loss exposure of not less than 5% of every securitised exposure; and
f. synthetic risk retention using derivatives, guarantees or credit support (in synthetic securitisations).

Conversely, risk retention rules do not apply to schemes where the credit risk associated with an exposure or a pool of exposures is not tranched, since they are not formally considered securitisations (article 4.1(61) CRR and article 2(1) of the Securitisation Regulation).

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

Certain institutional investors must verify that the risk retention obligations have been complied with, as part of their due diligence obligations under Article 5 of the Securitisation Regulation.

The extent of these obligations may vary depending on whether the originator or original lender is established in the EU.

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

ManCos, FTs, originators, and servicers, as well as members of their governing bodies in a personal capacity, may face administrative sanctions for breaching regulatory obligations.

The extent of these sanctions will depend on the seriousness of the breach. Under Law 5/2015, breaches of regulatory obligations may be minor, serious or very serious.

The penalties for breaching regulatory obligations are contained in Law 35/2003, of 4 November. They include fines, bans, revocations of authorisation, and temporary suspensions or exclusions.

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?

See question 4 above.

15. How are securitisation SPVs made bankruptcy remote?

Under Law 5/2015, FTs enjoy, in relation to the loans and other credit rights they acquire, the regime of absolute separation in the event of insolvency of the originator by reference (updated) to the final paragraph of the First Additional Provision of RDL 24/2021, governing mobilisations of mortgage loans by credit institutions.

FTs fall outside the scope of Royal Legislative Decree 1/2020, of 5 May (the **Insolvency Law**) since legal personality (which FTs do not have nor share with the originator or the ManCo) is a prerequisite to qualify as an insolvent debtor.

However, it is advised that transaction documents, in particular the FT's deed of incorporation, the legal opinion, and the prospectus (if applicable), include references to:

a. the FT being incorporated in compliance with Law 5/2015;
b. the FT being a separate estate not subject to the Insolvency Law or consolidation rules;
c. specific provisions against set-off risks and other indemnities from the originator deriving from debtors´ claims;
d. specific provisions ensuring ring fencing of the FT and back-up servicing;
e. annual accounts of the originator;
f. true sale of assets and provisions avoiding commingling of collections.

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

Depending on the underlying assets and the structure, typical credit enhancement mechanisms in Spanish

securitisations include:

a. debt tranching
b. liquidity lines granted by the originator or a super-subordinated tranche of notes (especially in public, high-volume rated deals)
c. public administrations' sponsor programmes and guarantees under EU programmes (eg EIF programs)
d. hedging instruments (especially in RMBS transactions)
e. reserves account
f. payment insurance
g. overcollateralization
h. performance guarantees

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

Transfers of receivables are made in written form and executed before a Spanish Notary to ensure they are evidenced and their effectiveness vis-à-vis third parties.

Some types of assets require specific procedures for the transfer to be considered a true sale such us certain debt instruments (eg promissory notes) and *in rem* secured loans whose transfer must be notarised and registered with the relevant public registry. Also, when credit institutions retain the servicing and legal title of mortgage loans, the transfer is made through issuing mortgage securities.

Notification to the obligors is not required for the transfer to be valid, although payments made by the debtor to the assignor will discharge the debtor to the extent that the transfer has not been notified.

However, statutes from certain autonomous regions, such as Andalusia and the Valencian Community, require the assignors to notify the obligors and disclose certain information. Failure to comply with this obligation does not affect the transfer's validity. However, it may lead to administrative sanctions.

Additionally, the obligor's consent is required for the transfer of future government receivables.

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

Transfers made under Spanish law face two main risks: re-characterisation and clawback.

Re-characterisation of the transfer as a secured loan rarely occurs in Spanish securitisations since there is no deferred consideration (excluding customary excess spread) or recourse to the originator.

On the other hand, since FTs enjoy an absolute separation right from the originator's insolvency estate, the transfer may only be subject to clawback in the event of the originator's insolvency to the extent that a claimant demonstrates that the transfer (or the security/guarantee granted in connection with the original debt) was made fraudulently.

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

Securitisations will be subject to Regulation (EU) 2016/679 (**GDPR**) and Spanish Organic Law 3/2018, of 4 December (Spanish Data Protection Act or **SDPA**) where the obligors are natural persons and personal data is transferred. However, other regulations (eg banking secrecy) also impose restrictions on the use and dissemination of sole traders' and firms' data.

Subject to limited exceptions, obligors' personal data can only be processed where information regarding the data processing is provided, and the data controller has legitimate legal grounds to process the personal data (eg data subjects' express and informed consent, processing being necessary for the performance of a contract).

The FT (represented by the ManCo), as responsible for the data file regarding the underlying receivables, has to implement the security measures required for data processing. In practice, data received by the ManCo is anonymized and servicers remain as data controllers. Record of obligors' personal data is deposited before a Notary (similar to a data trustee function), and it can be accessed only by the ManCo if the servicer is replaced or if the loan security is enforced.

Additionally, when the data is transferred outside the European Economic Area, the transfer will be subject to the requirements established in Chapter V of the GDPR and Title VI of the SDPA.

20. Is the conduct of credit rating agencies regulated?

The conduct of rating agencies is regulated at EU level under Regulation (EC) 1060/2009 (**CRA**), Regulation (EU) 513/2011 (**CRA II**) and Regulation (EU) 462/2013 (**CRA III**).

In rating the securitisation notes (when required), credit rating agencies follow their own methodology described in their legal criteria.

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

Spanish securitisations give rise to the following tax considerations:

a. Originators:
   i. **Corporate Income Tax (CIT):** the originator is subject to CIT on its worldwide income.
   ii. **Value Added Tax (VAT):** the assignment of receivables is subject to but exempt from VAT.
b. FT:
   i. **Corporate Income Tax (CIT)**: while subject to CIT, FTs do not normally report any net taxable income, as their financial income usually matches financial expenses.
   ii. **Value Added Tax (VAT):** the FT carries out an exempt VAT activity and it is not entitled to deduct input VAT.
   iii. **Stamp duty:** the assignment of the receivables is, in general, not subject to stamp duty except for mortgage loans or other secured loans registerable in a public registry. However, the assignment of mortgage loans in the form of transfer of mortgage securities is exempt from stamp duty.
c. Investors: while investment income is generally subject to withholding tax in Spain, the following rules apply:
   i. Listed notes: generally, no withholding tax is levied when the notes are listed and cleared, and the income is paid to Spanish corporate taxpayers or to non-resident investors.
   ii. Unlisted notes: as a general rule, no withholding tax on interest is levied to EU (other than Spain) and EEA tax residents if they can justify EU or EEA tax residence.
   iii. Residents in jurisdictions with ratified tax treaties with Spain benefit from the special provisions of such treaties.

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

There are no legal or regulatory obstacles for global or cross-border transactions.

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

Law 5/2015 is mainly focused on regulating FTs and ManCos and the Securitisation Regulation is fulfilling the prevailing role from a regulatory standpoint. As FTs are flexible instruments this may explain why the domestic legal framework for securitisations has remained static. Also, the Spanish securitisation market is following the trends of EU securitisation, such as the predominance of private deals, STS and SRT securitisations, the increasing use of synthetic structures, warehousing transactions and green bonds securitisations.

Notwithstanding, Law 5/2015 will likely need an update for a better alignment with the Securitisation Regulation, EU capital markets regulations and upcoming European securitisation market trends, eg tokenisation and DLT securitisation market.

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

See question 17 above.

Contributors

Andrés Lorrio
Partner, Head of Capital Markets
andres.lorrio@dlapiper.com

Diego Sánchez
Associate, Capital Markets
diego.sanchez@dlapiper.com