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France

SECURITISATION

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

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FRANCE
SECURITISATION

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

The French securitisation market involves a wide range of asset classes, such as trade receivables, performing or non-performing loans, commercial or residential real estate assets, auto assets, insurance risks, etc. In terms of volume, the French securitisation market has remained relatively stable despite hopes for a boost following the entry into force of a specific European legal and regulatory framework in 2017. The securitisation market continues to be identified as a key market for the development of the European capital markets union ("**CMU**") and a number of proposals and initiatives from the banking industry are currently under study by the European authorities to further enhance the market.

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

Receivables (*créances*) and debt instruments (*titres de créances*) are the typical assets eligible to the various securitisation vehicles that may be set up pursuant to French law. Certain securitisation vehicles can also legally invest in equity instruments (*titres de capital*) or tangible assets (*actifs corporels*), and both European and French legislation allow French securitisation vehicles to lend directly under certain conditions (including in the context of the European ELTIF legislation). Note that such lending authorisation has been a major recent exemption from the French banking monopoly rules, pursuant to which, traditionally, lending in France is only permitted to EU-passported or French licensed credit institutions (*établissements de crédits*) or financing companies (*sociétés de financement*).

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

French domestic legislation was originally enacted in 1988 and was revised and improved from time to time through successive reforms, the latest of which being the adoption of Ordinance (*Ordonnance*) 2017-1432 of 4 October 2017 (as implemented by two decrees (*décrets*) 2018-1004 and 2018-1008, dated 19 November 2018). The legal and regulatory framework is codified in the French Monetary and Financial Code ("**French CMF**") in Articles L.214-166-1 *et seq*.

At the European level, for securitisation transactions completed after 1 January 2019, Regulation (EU) 2017/2402 ("**Securitisation Regulation**") provides for harmonized rules directly applicable in France, notably for due-diligence, risk-retention and transparency requirements, to the extent a transaction qualifies as a "securitisation" under the Securitisation Regulation. In addition, a framework for simple, transparent and standardised ("**STS**") securitisation transactions has been introduced. The Securitisation Regulation has been supplemented from time to time since then by delegated legislation and, most recently, by Delegated Commission Regulation (EU) 2024/584.

This legal framework is completed by French and European regulations with respect to several key components of securitisation transactions: offer to the public of financial instruments, regulatory capital treatment, alternative investment fund managers, use of derivatives, etc.

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

Three types of special purpose vehicles can theoretically be used in a securitisation transaction in France: securitisation vehicles (*organismes de titrisation* or "**SVs**"), specialised financing vehicles (*organismes de financement spécialisés* or "**SFVs**") and specialised

professional funds (*fonds professionels spécialisés* or "**SPFs**"). The legislation includes SVs and SFVs into a generic category called "financing vehicles" (*organismes de financement*). Even though SPFs and SFVs are not, strictly speaking, securitisation vehicles, they share a common regime with SVs in many aspects.

SVs and SFVs can take two legal forms, as either a joint ownership (*co-propriété*) which is tax transparent and has no legal personality, or a limited liability commercial company which is subject to general corporate taxation. Both are formed and managed by a portfolio management company, which manages and represents the vehicle on a day-to-day basis, and a custodian (*dépositaire*), which must be an EU-passported or French-licensed credit institution.

To finance their investments or lending activities, the vehicles described previously may issue units or notes, enter into forward/future agreements, subscribe to indebtedness or use any other form of resources, debts or liabilities. Such vehicles can also grant or receive any type of security interest or guarantee under the conditions provided in their respective regulations or bylaws.

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

The French Financial Markets Authority (*Autorité des Marchés Financier* – "**AMF**"), together with the French Prudential Control and Resolution Authority (*Autorité de Contrôle Prudentiel et de Résolution* – "**ACPR**"), are the competent public authorities in France.

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)?

Investors in securitisations primarily include French or foreign financial institutions, investment funds, insurance/reinsurance companies and public entities. Each of these investors will have investing capabilities which will differ according to its legal status, regulatory regime and related prudential treatment. The market practice in France is to offer units or notes to professional and qualified investors, as there are restrictions applicable to retail investors for investing in financial products which make their participation in this type of transaction extremely rare.

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

Yes, as the Securitisation Regulation has been directly applicable in France since 1st January 2019.

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

Securitisation transactions are structured in France either as a private placement or through an offer to the public. If the transaction is public, the prospectus regulations and requirements under the Regulation (EU) 2017/1129 of 14 June 2017, as well as Article L.214-170 of the French CMF and the relevant market regulations (insider trading, etc.), are applicable.

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

SVs are not required to be disclosed (*déclaré*) to the AMF. However, SFVs and SPFs must comply with specific provisions for disclosure and reporting to the AMF, which are set out in a directive (*instruction*) DOC-2012-06. For public transactions, please refer to Question 10 below.

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?

To the extent securitisations are made through a public offer, disclosure obligations are subject to both Directive EC/2003/71 of 4 November 2003 and Regulation EU/2017/1129 of 14 June 2017, as well as to French law on SVs. The applicable domestic regulations include Article L.411-1 *et seq.* and D.411-2 *et seq.* of the French CMF, Article L.214-170 of the French CMF, Article 425-1 *et seq*. of the AMF General Regulations, and Instruction DOC-2011-01 of the AMF.

Article 7 of the Securitisation Regulation additionally requires portfolio management companies to disclose a minimal set of information to investors and relevant competent public authorities, regardless of whether the intended securitisation is public or private.

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

Article 6 of the Securitisation Regulation requires that any EU originator, sponsor or direct lender of a securitisation shall retain, on an ongoing basis, a material net economic interest in the securitisation transaction of no less than 5%. It is applicable to the extent a securitisation transaction qualifies as a "securitisation" under the Securitisation Regulation.

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

At European level, Article 5 of the Securitisation Regulation requires the investors referred to therein to conduct due diligence.

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

The Sanction Committee (*Commission des Sanctions*) of the AMF may generally take administrative actions against any participant to a securitisation transaction who violates a law or regulation applicable to it and falling within the AMF's scope of authority. Penalties for non-compliance with the Securitisation Regulation requirements may include administrative sanctions (such as fines) and remedial measures by the relevant French public authorities.

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?

Please refer to Questions 3 and 4.

Note SVs can qualify as "*fonds de prêts à l'économie*", as regulated under Article R.332-14-2 of the French Insurance Code, to allow insurers and mutual companies to invest in such types of vehicles and benefit from preferential prudential treatment as a result of an investment in an SV.

15. How are securitisation SPVs made bankruptcy remote?

French SVs and SFVs (or *organismes de financement*) are deemed to be outside of the scope of French insolvency laws (Articles L.214-169, VI, last paragraph and L.214-175-III of the French CMF). The transfer of receivables to an SV/SFV may thus not be challenged in the context of an insolvency affecting the seller: the transferred assets are segregated from the seller's insolvency and remain beyond the reach of its creditors, even in the event of bankruptcy or other receivership (Article L.214-169 of French CMF).

Only in the case of SVs, to avoid commingling issues, a specific segregation security regime applies with respect to collection accounts (specially dedicated bank account structure (*compte d'affectation spéciale*) – Article L.214-173 of the French CMF), which are opened in the name of the servicer and where sums on this account legally benefit to the SV under the transaction.

In addition, it is standard practice to introduce limitation liability and non-petition clauses in securitisation transaction documents to strengthen the bankruptcy remoteness of the relevant securitisation vehicle.

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

Various means of credit support are available to the parties to a securitisation transaction (depending on the terms and conditions of the transaction):

- over-collateralisation (through notably deferred purchase price, cash reserve or excess spread);
- tranching of securities issued by the SV (senior notes/junior notes), together with subordination arrangements and waterfall provisions;
- definition of contractual eligibility criteria, R&Ws, negative covenants, financial triggers and termination events;
- security arrangements over collection accounts (dedicated account mechanism);
- parent performance guarantees;
- hedging;
- third party guarantees and letters of credit; or
- credit insurance.

These means may alternatively benefit the SV or they may be available at the level of the relevant holders of securities issued by the SV. Each of them may give rise to specific legal or tax issues that require specific

analysis.

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

Any transfer of receivables to an SV may be validly made by any French or foreign legal transfer mechanism (e.g., for France, a civil law assignment of receivables or through a simplified transfer deed (*bordereau de cession*) exchanged between the seller and the SV pursuant to article L.214-169-V of the French CMF). This transfer deed simplifies the transfer process by automatically and immediately transferring all related security and ancillary rights attached to the receivables as at the transfer date. The assignment is valid from the date indicated by the SV on the assignment form and enforceable as against third parties. If the SV wishes to "perfect" the assignment as against the relevant debtor, such debtor must be notified of the transfer. Before notification, the seller is considered to remain the SV's agent for collecting receivables. Upon notification of the assignment, the debtor must pay the receivables directly to the SV.

All payments received and all transactions carried out by a SV and SFV (including the assignment of claims) may not be challenged pursuant to article L.632-2 of the French Commercial Code (see Question 15).

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

See Questions 15 and 17.

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

Regulation (EU) 2016/679 of 27 April 2016 ("**GDPR**") and French law *Informatique et Libertés* (n° 78-17 dated 6 January 1978) set out specific restrictions on the processing and transfer of personal data. The applicable legal framework for data protection has been now unified across the European Union after the entry into force of GDPR.

In practice, in securitisation transactions involving transfers of personal data, such data relating to the underlying debtors is frequently held on a crypted file with a decryption key given to an instructed third party, which is authorised to hand over such key to the SV upon occurrence of certain trigger events provided for by the relevant transaction documents.

20. Is the conduct of credit rating agencies regulated?

In France, Rating Agencies ("Ras") are regulated under Regulation (EC) 1060/2009 (as amended – "**CRA Regulation**"), as well as provisions outlined in Articles L.621-20-8 and L.621-20-9 of the French CMF. In the securitisation area, there are specific restrictions, such as the mandate for at least two RAs in the case of rated structured finance instruments (Article 8 quarter of Regulation (EU) 462/2013) and turnover requirements. Failure to comply with RA regulations may result in financial penalties and related publication obligations. In France, RAs are subject to a specific liability regime outlined in Article L.321-2 of the French CMF as services related to investment services. This makes them contractually and extra-contractually liable for any damages resulting from their failure to fulfil their obligations under the CRA Regulation.

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

Under French law, assignment of receivables does not attract any transfer tax, stamp duty or similar taxes (unless the assignment is voluntarily submitted to tax registration) and qualifies as VAT-exempt financial transactions regardless of the nature of the receivables (except for operations related to the collection of receivables). It is also notable that the sale of receivables at a discount, or where a portion of the price is payable upon collection of the receivable, is considered to be a financial expense deductible from the seller's taxable result.

No withholding tax applies to payments of interest or other income made by debtors (under trade receivables owned by them) established or domiciled in France, unless such payments are made in a non-cooperative state or territory ("**NCST**"), in which case they are subject to a 75% withholding tax. NCSTs are defined under Article 238-0 A of the French Tax Code, as being jurisdictions which have not ratified a treaty with France (or 12 other jurisdictions) providing for the exchange of tax-related information, are not member states of the EU, and are under scrutiny by the OECD Global Forum on Transparency and Exchange of Information. A list of NCSTs is updated yearly by the French Government (please refer to order (*arrêté*) of 16 February 2024 for the last update).

Moreover, pursuant to Article 261-C-1°-c of the French Tax Code, services in relation to receivables are, in principle, exempt from VAT. However, as an exception to the foregoing, services in relation to the collection of receivables (debt recovery services) are subject to VAT.

The tax situation of SVs differs depending on whether they were formed as a fund or a company:

- if it is a fund, it does not have legal personality and is a tax-transparent vehicle for corporation income tax purposes, and it cannot benefit from double taxation treaties entered into by France; and
- if it is a company, it has legal personality and is not tax transparent, and is therefore subject to corporate income tax and may be recognised as 'tax resident' and benefit from double taxation treaties entered into by France.

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

The strength of the French legal regime on securitisations makes France a very favorable and attractive jurisdiction for both domestic and cross-border transactions.

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

Recent securitisation transactions take into account benchmark interest rates, following the entry into force of Regulation (EU) 2016/1011. In France, the common reference rate is the EURIBOR provided by the European Money Markets Institute (EMMI), which is listed on the register of administrators and benchmarks established and maintained by the ESMA. The French market has not shown changes in the use of IBOR rates.

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

The French legal regime on securitisations is already favorable, reliable and predictable. The 2017 reform made it even more attractive and responded to market demand for increased investor protection. At European level, the initiative for harmonising rules with the CMU is positive.

On a more legal note, a recent proposal for a European regulation on the law applicable to third-party effects of assignments of claims has been in discussion over the years. Such regulation would be welcomed in order to clarify the potential perfection formalities required for transfers of receivables in the context of cross-border securitisation transactions.

25. 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.

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