PANORAMIC

STRUCTURED FINANCE & SECURITISATION 2026

Contributing Editors

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Dechert LLP

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Quick reference guide enabling side-by-side comparison of local insights, including into the legislative framework and local market climate; regulatory bodies, requirements and sanctions; eligibility considerations (for parties and assets); execution issues from permissible types of SPV to risk retention requirements; security, taxation and bankruptcy considerations; and recent trends.

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Global overview

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Dechert LLP

In spite of persistent macroeconomic uncertainty, the ABS market in 2025 continues to show substantial strength. Performance and issuance levels have remained robust and grown year-over-year, supported by stabilising interest rates, lower rate volatility and resilient underlying collateral performance. Performance and issuance levels within subsectors of ABS again varied considerably, but 2025 has, so far, reinforced the growth trends seen in autos, consumer related exposures and esoterics. Autos, CDO/CLO style structures, equipment, credit cards and other esoteric transactions (such as solar and data centers) continued to see strong volumes. Residential and commercial mortgage-backed securitisations also remain active, increasing year-over-year, underscoring the depth and liquidity of these markets.

2025 recap

Asset-backed securities

The asset-backed securities (ABS) market in 2025 has extended the strong performance seen in 2024, benefitting from a combination of robust issuance, resilient collateral performance and strong investor demand for spread product in a moderating rate environment. The RMBS and CMBS sectors saw significant growth, particularly as the Federal Reserve began slowly cutting interest rates. Collateral performance in the major consumer ABS sectors has generally remained stable to better than expected, notwithstanding the higher interest rate environment of the past two years. This has supported continued strong investor demand for prime auto loans and leases, equipment ABS, credit card ABS and a broad range of esoteric transactions. New and returning investors – including banks, insurance companies, credit unions and increasingly private credit providers such as private equity firms and hedge funds – have remained active purchasers of senior ABS tranches, attracted by relatively short durations, strong credit enhancement and the potential for spread pickup over US Treasuries.

Commercial mortgage-backed securities

The commercial mortgage-backed securities (CMBS) market demonstrated exceptional growth in 2025, with year-to-date issuance reaching US$90.85 billion through the third quarter, representing a 25 per cent increase compared to the same period in 2024. Full-year 2025 issuance is projected to reach approximately US$120 billion, which would mark the strongest performance since 2007. This continued the robust recovery seen in 2024, when the market achieved US$115 billion in issuance, representing a 150 per cent increase from 2023. Single-asset, single-borrower (SASB) deals accounted for over two-thirds of total 2025 issuance, continuing to dominate the market composition. This momentum was

driven Federal Reserve rate cuts, stabilising property fundamentals, liquid capital markets and sustained investor demand. The continued prevalence of five-year loan terms also supported deal flow, with five-year conduit transactions dominating the conduit market. Despite this robust issuance, challenges persisted in the office sector, where delinquency rates reached a record 11.8 per cent in October 2025. Multifamily also experienced stress, with delinquency rates rising to 7.12 per cent, which is the highest level since 2015. However, industrial properties and certain high-quality office assets remained attractive to investors, with retail showing stabilisation amid steady sales growth.

Collateralised loan obligations

The collateralised loan obligations (CLO) market entered 2025 following a record setting 2024, in which total US CLO issuance (new issues and refinancings) exceeded US$200 billion for the first time. CDO/CLO style structures remain a central part of the US securitisation landscape, accounting for nearly a third of all US ABS issuance in 2025.

Market conditions in 2025 have remained highly supportive for CLOs. Underlying leveraged loan origination has accelerated, with net loan origination widely expected to exceed US$200 billion for the year, driven by a significant rise in US M&A activity and LBO deal value. The macro environment – characterised by moderating inflation, a resilient US economy and the beginning of a rate cutting cycle – has sustained investor appetite for floating rate CLO securities.

Private credit CLOs again contributed meaningfully to overall volumes, building on the record issuance levels achieved in 2023 and 2024, while traditional broadly syndicated loan (BSL) CLOs also saw strong new issue activity as underlying loan supply improved. Spreads on new issue BSL CLOs, which moved towards multi year tights in late 2024, remained relatively compressed in 2025, supporting continued refinancing and reset activity.

In parallel, market participants have continued to develop bespoke and hybrid structures that combine features of CLOs, fund finance arrangements and synthetic exposures, demonstrating ongoing innovation even in a period of strong demand for established products.

On the regulatory side, CLO managers and arrangers have remained focused on the Corporate Transparency Act and on evolving bank capital rules, but, as in 2024, there have been no significant new regulatory initiatives that fundamentally threaten the CLO business model or make CLO exposures materially less attractive for investors.

2026 outlook

Looking ahead to 2026, the ABS market appears poised to maintain its momentum, albeit with potential shifts in relative value and issuance mix across asset classes. Collateral performance has been stronger than anticipated and there are a number of opportunities in the market where the rating agencies see the potential for stable to positive ratings. For example, prime auto loans, credit card receivables, equipment loans and other consumer and commercial assets ABS all appear to have stable collateral performance, which is expected to continue in 2026. Taken together with strong historical performance in these

sectors and robust credit enhancement providing a buffer against potential economic slowing, all signs point to continuing strong issuance in 2026.

The CMBS market is positioned for continued expansion in 2026, with issuance forecasted to reach a post-Global Financial Crisis high of US$183 billion, which would represent an 18 per cent increase from 2025 levels. Key drivers include a maturity wall of US$525 billion in loans maturing in 2026, followed by US$587 billion in 2027, along with continued weaker demand from banks for commercial real estate lending, which is expected to direct more loans into securitisations. Single-borrower transactions are expected to account for more than half of 2026 issuance, with conduits continuing to be dominated by five-year deals. While risks persist, including elevated distressed loan volumes, persistent office sector weakness, and emerging multifamily loan distress, the market's demonstrated resilience through 2024–2025, combined with favourable monetary policy and improving property fundamentals in key sectors, support a cautiously optimistic outlook for continued growth through 2026.

CLO market forecasts for 2026 continue to be bullish, with many observers expecting new issue volumes to grow further on the back of increased net loan origination, while refinancing and reset activity is expected to remain healthy, with a large number of deals that originally closed in 2023 scheduled to come out of their non-call periods and be ripe for refinancing given the current compressed spread for AAA CLO securities. Concerns about renewed inflation, while not negligible, are generally less acute for CLO investors given the floating rate nature of both CLO liabilities and the underlying loan assets.

Overall, the combination of easing but still elevated interest rates, improving rate volatility, strong issuance and trading volumes, and a resilient macroeconomic backdrop is likely to create an environment of continued opportunity for securitisation market participants. At the same time, risks associated with specific asset classes – particularly office backed commercial real estate – and with the broader economic and regulatory outlook will continue to reward those who can adapt quickly to shifting market dynamics.

Regulatory developments

Looking back at 2025 and forward to 2026, the securitisation industry has been, and will be, impacted by a plethora of significant regulatory changes impacting the US and the EU, particularly given the continued uncertainty around the new administration in the US. Although the precise policies of the new administration in Washington are still emerging, there is a growing expectation that certain initiatives advanced in the prior period will be revisited, scaled back or, in some cases, abandoned. In particular, industry participants will be keen to see what will happen with the Basel III re-proposal, the currently stayed but still looming Corporate Transparency Act, and uncertain future of the SEC's climate disclosure rules and provisions related to environmental, social and corporate governance. Further, the US Supreme Court's decision in *Loper Bright*, which overturned the deference to agency rule making that had been the norm in the US since the 1984 *Chevron v Natural Resource Defense Council* decision, is expected to prompt increased judicial scrutiny of both existing rules and new regulations, including those affecting securitisation markets. Finally, the market has adjusted to the SEC's new Rule 192 securitisation conflicts of interest rule, with no-action guidance issued in May smoothing compliance.

Basel III

The future implementation of the Bank for International Settlements' Basel III 'endgame' rules remains in limbo. The Board of Governors of the Federal Reserve had suggested a re-proposal that would reduce the increase in bank's Tier 1 capital requirements from 19 per cent to 9 per cent, but the Federal Deposit Insurance Corporation has opposed that change. With the change in administration in Washington and massive industry pushback, regulators have publicly signaled they intend to substantially revise the proposal. For securitisation markets, including ABS and CLOs, the ultimate calibration of Basel III capital charges will be a critical determinant of banks' risk appetite for holding securitisation positions in both their banking and trading books, and for providing warehousing and term financing to securitisation sponsors.

Corporate Transparency Act

On 1 January 2025, the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) Corporate Transparency Act (CTA), began applying to each corporation, limited liability company or other entity created by the filing of a document with a secretary of state or any similar office under the laws of a state or tribe unless one of 23 exemptions applies. However, in March 2025 FinCEN issued an interim final rule exempting domestic entities and US persons from reporting beneficial ownership information under the CTA, largely defanging the CTA as a concern in the US.

Climate disclosures

In March 2022, recognising a growing demand for climate-related disclosure from investors seeking to implement ESG principles in their investment strategies, the SEC proposed a rule that would require public companies to provide certain climate-related information, including with respect to environmental risks that are reasonably likely to have a material impact on such companies' businesses and metrics around such companies' greenhouse gas emissions, in their registration statements and periodic reports. The SEC adopted the rule in March 2024 but immediately stayed its implementation due to legal challenges. In March 2025, the SEC voted to withdraw its defence of the rule, stating it lacked authority, but did not formally rescind the rule; subsequently, a coalition of 19 US state attorneys general intervened to defend the rule in court. The SEC has asked the court to rule on the rule's validity, but the court put the case on hold, demanding the SEC either defend or reconsider the rule. As a result, there is still considerable uncertainty around the rule, though it is widely expected that, under the current administration in Washington, the rule is unlikely to be adopted in its current form.

Rule 192

On 27 November 2023, as mandated by the Dodd-Frank Act, the SEC adopted new Rule 192 regarding conflicts of interest in securitisations, mandating that all ABS transactions with a first closing of sale on or after 9 June 2025 comply with the rule. Rule 192 broadly prohibits securitisation participants – including underwriters, placement agents, initial purchasers and sponsors, as well as certain affiliates and subsidiaries – from engaging in transactions that involve or result in a material conflict of interest with investors in an asset backed security they structure or distribute, for a period beginning when they

become engaged in the securitisation and ending one year after the first closing of the sale of the ABS, with exceptions for risk mitigating hedging, bona fide market making and certain liquidity commitments. On 16 May 2025, the Division of Corporation Finance issued a no action letter that has largely smoothed the implementation of Rule 192 in the ABS market by allowing financial institutions to rely on existing information barriers ('need-to-know' policies) to prevent inadvertent conflicts of interest. The no-action guidance provided a clear path to compliance, avoiding uncertainty and allowing the market to function well following the rule's implementation, with participants largely comfortable with the compliance framework.

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Summary

TAXATION

BANKRUPTCY

UPDATE AND TRENDS

GENERAL FRAMEWORK

Legislation

1 What legislation governs securitisation in your jurisdiction? Has your jurisdiction enacted a specific securitisation law?

There is no legislation that specifically governs securitisation in Japan. Rather, securitisation in Japan is governed by laws and regulations applicable to specific types of transactions, such as the Civil Code (Law No. 89, 1896), the Trust Act (Law No. 108, 2006) and the Financial Instruments and Exchange Act (Law No. 25, 1948). There is a law specifically dedicated to facilitating asset securitisation, which is the Act on the Securitisation of Assets (Law No. 105, 1998) (the Securitisation Act). This act authorises the use of two types of vehicle specifically designed for securitisation, namely the specific purpose company (TMK) and the specific purpose trust (TMS), and provides for relevant regulations applicable to them. TMKs are frequently used as issuer vehicles for Japanese asset securitisation transactions. However, the use of those vehicles is not required, and many securitisation transactions involve schemes that are not based on the Securitisation Act.

Law stated - 5 December 2025

Applicable transactions

2 Does your jurisdiction define which types of transactions constitute securitisations?

There is no law that specifically defines which types of transactions constitute securitisations in Japan. The Securitisation Act broadly defines asset securitisation as follows:

- a series of acts wherein a TMK acquires assets with monies obtained through the issuance of securities or borrowings; or
- wherein a trustee holds assets in trust and issues trust beneficiary certificates representing interests in a TMS; and
- with monies obtained through the administration and disposition of such assets, performs payment obligations in relation to such securities, borrowings or trust beneficiary certificates, as the case may be.

Under the Securitisation Act, TMKs and TMSs are authorised to carry out transactions that are contemplated by the above definition.

Law stated - 5 December 2025

Market climate

3 How large is the market for securitisations in your jurisdiction?

According to a survey conducted jointly by the Japanese Bankers Association and the Japan Securities Dealers Association, there were 198 reported securitisation transactions with underlying assets located in Japan in 2024, and the aggregate issue price of the securities issued in relation to those transactions is approximately ¥4.4 trillion. As this number is based on information provided through voluntary reporting, the actual number of securitisation transactions that took place in that period might be much larger.

Law stated - 5 December 2025

REGULATION

Regulatory authorities

4 | Which body has responsibility for the regulation of securitisation?

As there is no Japanese legislation governing securitisation in general, there is no body with specific responsibility for the regulation of securitisation. Nevertheless, as securitisation typically involves securities and financial transactions, the Financial Services Agency of Japan (FSA) fulfils an important role in the context of securitisation regulation in general. Under the Securitisation Act, it is the prime minister who is primarily in charge of administrating a regulation framework for specific purpose companies (TMKs). However, this authority is delegated to the commissioner of the FSA, who, in turn, has delegated this authority to the director generals of the local finance bureaux.

Law stated - 5 December 2025

Licensing and authorisation requirements

5 | Must originators, servicers or issuers be licensed?

Even though many originators of securitisation transactions are licensed under regulations governing their specific businesses, to which the underlying assets relate (eg, an operator of a banking business is required to obtain a licence under the Banking Act (Law No. 59, 1981)), there is no licensing requirement specifically applicable to originators or issuers to conduct securitisation transactions in general. However, TMKs and trustees of specific purpose trusts (TMSs) must submit prior notification to local finance bureaux under the Securitisation Act. In general, servicers are also not subject to a licensing requirement. However, to engage in collection activities in relation to certain delinquent receivables as a special servicer will require a licence under the Act on Special Measures Concerning Claim Management and Collection Businesses (Law No. 126, 1998) (the Servicer Act).

Law stated - 5 December 2025

6 | What will the regulator consider before granting, refusing or withdrawing authorisation?

Except for the notification requirement under the Securitisation Act, there is no licensing requirement applicable to securitisation transactions in general. A local finance bureau will typically only check whether a filing document has been prepared in accordance with an appropriate format in relation to a notification submitted by a TMK.

Law stated - 5 December 2025

Sanctions

7 | What sanctions can the regulator impose?

Except for the notification requirement under the Securitisation Act, there is no licensing requirement applicable to securitisation transactions in general. As for the notification requirement under the Securitisation Act, the failure to submit the required notification may result in imprisonment for up to three years, a fine of up to ¥3 million, or both.

Law stated - 5 December 2025

Public disclosure requirements

8 | What are the public disclosure requirements for issuance of a securitisation?

There is no public disclosure requirement applicable to issuance of securitisation instruments in general. Depending on the type of instrument issued for the transaction in question (ie, bonds, shares or trust beneficiary certificates) and the method of the offering (ie, public offering or private placement), the issuance may be subject to public disclosure requirements applicable to certain securities in accordance with the Financial Instruments and Exchange Act.

Law stated - 5 December 2025

9 | What are the ongoing public disclosure requirements following a securitisation issuance?

There is no ongoing public disclosure requirement following a securitisation issuance in general. Depending on the type of instrument issued for the transaction in question (ie, bonds, shares or trust beneficiary certificates) and the method of the offering (ie, public offering or private placement), the issuer may be subject to ongoing public disclosure requirements applicable to certain securities in accordance with the Financial Instruments and Exchange Act.

Law stated - 5 December 2025

ELIGIBILITY

Originators

10 Outside licensing considerations, are there any restrictions on which entities can be originators?

In general, there are no restrictions on which entities can be originators as a matter of Japanese law. However, in practice, parties such as arrangers and rating agencies will closely scrutinise potential originator candidates to determine their qualifications in several respects, including, among others, their ability to manage and service the underlying assets, the quality of the securitised assets and even their creditworthiness. Therefore, only entities that are deemed qualified by those parties may become originators for credit-rated transactions.

Law stated - 5 December 2025

Receivables

11 What types of receivables or other assets can be securitised?

In terms of the types of assets that can be securitised, there is no restriction under Japanese law specifically applicable to securitisation.

This is also the case for specific purpose companies (TMKs) under the Securitisation Act, with limited exceptions, such as partnership interests, silent partnership interests and beneficial interests in a trust whose trust asset is cash. Types of receivables that are commonly securitised in practice include:

- receivables on loans secured by residential mortgages;
- credit card receivables;
- lease receivables;
- auto loan receivables; and
- account receivables, which include promissory notes and electrically recorded monetary claims.

Real estate is another type of asset commonly securitised in Japan.

Law stated - 5 December 2025

Investors

12 Are there any limitations on the classes of investors that can participate in an offering in a securitisation transaction?

There are no limitations on the classes of investors that can participate in an offering in a securitisation transaction. However, practically speaking, the securitisation structure is

too complicated and the face-value amounts of the securitisation instruments are too large for retail investors. Therefore, only institutional or relatively larger (and more sophisticated) investors are targeted for securitisation transactions.

Law stated - 5 December 2025

Custodians/servicers

13 Who may act as custodian, account bank and portfolio administrator or servicer for the securitised assets and the securities?

There is no regulation specifically applicable to securitisation transactions that identifies or describes the qualifications to serve as custodian, account bank and portfolio administrator, though an entity serving in any such capacity may be subject to generally applicable regulations. For example, an accounting bank should have a banking licence under the Banking Act. As for servicers in receivable securitisation transactions, a common structure is for the originator to serve as the primary servicer until:

- a servicer termination event occurs, in which case a backup servicer will succeed the originator as the primary servicer; or
- a securitised receivable becomes delinquent, in which case a 'special servicer', which is often a servicer licensed under the Servicer Act, will succeed the originator and commence collection proceedings in relation to the receivable in question.

The arrangement of the second point above is necessary owing to the Japanese Attorney Act (Law No. 205, 1949), which prohibits members of the general public who are not licensed attorneys from providing legal services (the collection of delinquent receivables would fall into this category). Under the Securitisation Act, a TMK must entrust the securitised assets that it holds to a licensed trustee, which essentially entails a transfer of title to the trustee, unless the relevant asset is real estate, receivables or some other assets, in which case the TMK may retain the originator, or some other person with sufficient financial soundness and personnel capable of administrating and disposing of the securitised assets appropriately, as the administrator that will administer and dispose of the securitised asset. In the latter case, the administrator will be subject to various obligations, such as segregation of securitised assets from its own assets and cooperation with document inspection requests from the TMK.

Law stated - 5 December 2025

Public-sector involvement

14 Are there any special considerations for securitisations involving receivables with a public-sector element?

To date, it has been understood that securitisation of assets held by the public sector is difficult. However, it is viewed that this might be a promising new type of securitisation in the future after difficulties in relation to approvals, such as the Local Autonomy Act (Law

No. 67, 1947), which requires an approval of local assembly for disposal of assets and any other procedures, are overcome. In fact, there is one financing transaction executed by a public sector entity that is wholly owned by a local government that utilises such an entity's receivables for securitisation. If similar transactions occur in the future, another asset class for investors may be realised.

Law stated - 5 December 2025

TRANSACTIONAL ISSUES

SPV forms

15 | Which forms can special purpose vehicles take in a securitisation transaction?

Specific purpose companies (TMKs) are special purpose vehicles (SPVs) frequently used in securitisation transactions. In addition to TMKs, a trust is also a vehicle that is commonly used in securitisation transactions. Typically, the originator, as the settlor, will entrust its asset by conveying it to a trustee and, in return, acquire beneficial interests in the trust. Thereafter, the settlor will sell the beneficial interest to investors and thereby raise funds. Alternatively, the originator may be able to sell the beneficial interests in the trust to a TMK. In this case, the TMK will issue securities to its investors and the proceeds from the issuance are paid to the originator as payment of the purchase price for the beneficial interest in the trust. Also, the use of a declaration of trust is available in Japan under the Trust Act.

For securitisation of real estate, limited liability companies (GKs) are also frequently utilised as SPVs. Usually each investor enters into a silent partnership contract (TK) with the GK, under which the investor makes a contribution to the GK and the GK distributes the profits arising from the asset (in this case, real estate) that it acquires using the funds contributed by the investor. Further, a general incorporated association under the Act on General Incorporated Association and General Incorporated Foundations (Law No. 48, 2006) is typically used to create a bankruptcy-remote holding company of the SPVs.

Law stated - 5 December 2025

SPV formation process

16 | What is involved in forming the different types of SPVs in your jurisdiction?

In determining which type of SPV should be utilised, parties take into consideration various factors, of which cost is one of the most important. Generally, a vehicle that will require the involvement of a financial institution (eg, a trust for which a trust bank will need to be appointed to serve as its trustee) may be costlier than vehicles that do not require such involvement (eg, a GK). The nature of the investment, whether it is debt or equity, will also influence the type of vehicle to be used. Trusts and TKs are usually used for equity investments, whereas both debt and equity instruments can be issued by a TMK.

Law stated - 5 December 2025

Governing law

17 Is it possible to stipulate which jurisdiction's law applies to the assignment of receivables to the SPV?

Under Japanese conflict-of-law rules (the Act on General Rules for Application of Laws (Law No. 78, 2006)), the effect of an assignment of receivables, regarding the obligor and any third party, would be determined based on the law applicable to the assigned receivables. This means that even if the governing law of the receivables purchase agreement (RPA) is Japanese law, the effect of the assignment in relation to its obligor and any third party, such as matters related to perfection, under the RPA is determined based on the law governing the assigned receivables rather than the law governing the RPA.

Law stated - 5 December 2025

Asset acquisition and transfer

18 May an SPV acquire new assets or transfer its assets after issuance of its securities? Under what conditions?

Generally speaking, a Japanese SPV can acquire new assets or transfer its assets after issuance of its securities. The conditions for the acquisition of new assets or transfer of assets are reflected in the relevant contracts and are not stipulated by law. Usually such conditions are set forth in the contracts after taking into consideration their potential effect on:

- the rating of the existing securities;
- the loan-to-value ratio;
- the debt service coverage ratio;
- the limited recourse structure;
- true sale-related concerns; and
- other factors that may affect the securities.

Where a TMK is used as an SPV and acquires new assets or transfers its assets, unless such acquisition or transfer is anticipated under its asset securitisation plan (this plan is to be attached to the TMK's business commencement notification, which is to be filed with the local finance bureau), a change of the asset securitisation plan will need to be filed. This change may require the consent of interested persons, including all of the investors. Further, acquisition of additional parcels of real estate by a TMK is currently limited to certain cases, such as acquisition of real estate that is affiliated with the real estate already held by the TMK.

Law stated - 5 December 2025

Registration

19 | What are the registration requirements for a securitisation?

In general, no registration is required for securitisation, except for securitisations using a TMK or a specific purpose trust (TMS) under the Securitisation Act and which require the submission to the local finance bureau of a prior notification of the business commencement notification or TMS notification, as the case may be. Documents such as the TMK's asset securitisation plan (ie, a document setting forth the basic particulars concerning the asset securitisation to be carried out by the TMK) are to be attached to this notification.

Law stated - 5 December 2025

Obligor notification

20 | Must obligors be informed of the securitisation? How is notification effected?

Obligors need not be notified to carry out a securitisation. Rather, it is performed for the purpose of perfection of the receivables that are to be acquired.

There are three ways to perfect an assignment of receivables:

1. sending a written notice with a notarised date to the third-party obligor;
2. obtaining a written consent with a notarised date from the third-party obligor; and
3. registering the assignment with the competent legal affairs bureau pursuant to the Act concerning Special Exceptions to the Civil Code with respect to the Perfection of Assignment of Movables and Receivables (Law No. 104, 1998) (the Perfection Act).

In the case of method (3), for an assignment to be able to be registered, the assignor must be a juridical person registered in Japan (ie, a Japanese corporation). No such limitation or restriction exists with respect to the assignee or obligor. Further, in Japan, perfection of an assignment in relation to third parties, other than the obligor, is not sufficient to assert the assignment against the obligor. Methods (1) and (2) would satisfy both requirements, but completion of the registration in accordance with the Perfection Act through method (3) only relates to perfection in relation to third parties.

For the assignment to be perfected regarding the obligor, in addition to the registration provided in method (3):

- the assignor or the assignee must send to the obligor a notice stating that the assignment has been made, and that such assignment has been registered, together with a certificate of registered matters issued by the competent legal affairs bureau; or
-

the obligor must consent to the assignment and acknowledge the registration of such assignment.

In cases where method (3) is used, which is often the case where receivable securitisation transactions are conducted on an undisclosed basis with regard to obligors, it is common for the procedures for perfection regarding the obligors in accordance with the above two methods not to be taken until certain events, such as a default of the originator, occur.

Law stated - 5 December 2025

21 What confidentiality and data protection measures are required to protect obligors in a securitisation? Is waiver of confidentiality possible?

The Act on the Protection of Personal Information (Law No. 57, 2003) (the Personal Information Protection Act) is the Japanese law that was enacted to protect the rights and interests of individuals while taking into consideration the usefulness of personal information, especially in light of the remarkable increase in the use of personal information with the development of our advanced information and communications society. Pursuant to the Personal Information Protection Act, a business operator handling personal information may not provide personal data to any third party without the prior consent of the affected individual, except where:

- the provision of personal data is done pursuant to applicable laws and regulations;
- provision of personal data is necessary for the protection of life, body or property, and in situations where it is difficult to obtain the consent of the affected individual;
- provision of personal data is necessary for improving public health, or promoting the sound growth of children and it is difficult to obtain the consent of the affected individual; and
- provision of personal data is necessary to cooperate with a state organ, a local government or an individual or a business operator entrusted to execute certain affairs prescribed by laws and regulations in situations where obtaining the consent of the affected individual is likely to impede the execution of such affairs.

In conjunction with the transfer of receivables, some personal data may need to be provided to the SPV. For practical reasons, it may not be feasible to obtain the consent of the affected individual.

For credit card receivables, auto loan receivables and lease receivables, to facilitate securitisation, the originator usually insists on the inclusion of a provision in the underlying contract with the obligors that acknowledges the obligor's consent to the provision of personal data in the case of an assignment (including, but not limited to, securitisation) of those receivables.

However, for assignments of receivables where the obligors' express consent to the provision of personal data is not obtained, further analysis is necessary to consider whether the provision of personal data in that situation may contravene the restriction imposed by the Personal Information Protection Act. Regarding this point, the current practical interpretation of the relevant law suggests that because a receivable is assignable in

principle, the consent of the person to the provision of personal data can be assumed in the case of an assignment of receivables to the extent that it will be necessary for the management and collection of such receivables by the assignee. In this situation, the exception in the second bullet point above may apply, and therefore securitisation of receivables should be feasible.

Law stated - 5 December 2025

Credit rating agencies

22 Are there any rules regulating the relationship between credit rating agencies and issuers? What factors do ratings agencies focus on when rating securitised issuances?

Under the Financial Instruments and Exchange Act (FIEA), credit rating agencies that satisfy certain conditions, such as the development of appropriate systems, can be registered. It is not mandatory for credit rating agencies to be registered in Japan. However, in cases where securities companies or other financial institutions conduct solicitations using a credit rating determined by an unregistered credit rating agency, they are required to explain to potential investors, among other things, that the 'rating is a rating by an unregistered credit rating agency'.

The independence of registered credit rating agencies is required under the FIEA. The FIEA also provides for regulations applicable to registered credit rating agencies covering, among other things, the following:

- quality control in the rating process, including measures to protect investors' interests in respect of the interests of the credit rating agency or other interested parties such as issuers and originators;
- prohibition of name lending;
- prohibition of the provision of ratings to closely related persons;
- prohibition of the concurrent provision of rating and consulting services;
- timely disclosure of information including rating determination policies; and
- periodic disclosure of information.

Therefore, a registered credit rating agency may be prohibited from providing a rating to a closely related issuer.

When rating securitised issuances, rating agencies mainly focus on cash flow analysis, bankruptcy-remoteness and operational risks of the transaction parties, taking into consideration quantitative and qualitative aspects of the structure and type of assets for each transaction.

Law stated - 5 December 2025

Directors' and officers' duties

23 What are the chief duties of directors and officers of SPVs? Must they be independent of the originator and owner of the SPV?

In cases where a joint stock company or a GK is used as an SPV, the Companies Act (Law No. 86, 2005) will apply.

With regard to joint stock companies, the relationship between the company and its directors is regulated by the provisions of the Civil Code addressing entrustment. Accordingly, a director has a duty to the company to use the due care of a good manager (duty of due care) when performing the director's duties. In addition to this duty of due care, the Companies Act provides that directors of a joint stock company must comply with all laws and regulations and the company's articles of incorporation, as well as all resolutions adopted at general meetings of the company's shareholders, and that directors must perform their duties faithfully for the benefit of the company. This duty is generally called the fiduciary duty of directors. There are also special provisions restricting or expanding the responsibilities of directors in certain situations or under certain circumstances, including (but not limited to) where competitive transactions or conflict of interest transactions exist.

With regard to GKs, members who manage a GK owe a duty of due care and a fiduciary duty to that GK. Such members are jointly and severally liable to the GK for any damage incurred by the GK that is caused by the non-performance of duties of the managing members. Unlike a joint stock company, the Company Act does not specifically provide an exemption from such liability. However, it is generally understood that a GK can grant an exemption from such liability, either in advance or after the fact, and the method for obtaining such exemption or conditions for the grant of such exemption may be set out in the GK's articles of incorporation.

In cases where a TMK is used as an SPV, the Securitisation Act will apply. The directors of the TMK owe a duty of due care and a fiduciary duty to that TMK. There are also special provisions restricting or expanding the responsibilities of directors in certain situations or under certain circumstances, including but not limited to, where competitive transactions or conflict of interest transactions exist. Further, if a third party sustains damages as a result of the wilful misconduct or gross negligence of directors of a joint stock corporation or a TMK or managing members of a GK in the performance of their duties, such directors or managing members will be jointly and severally liable to such third party for such damage.

There is no legal requirement for such directors or managing members to be independent of the originators or the owner of the SPV. However, it is usual practice for the SPV to appoint an independent director or managing member to secure the bankruptcy-remoteness of the SPV.

Law stated - 5 December 2025

Risk exposure

24 Are there regulations requiring originators and arrangers to retain some exposure to risk in a securitisation?

There is no regulation under Japanese law requiring originators or arrangers to retain some exposure to risk in a securitisation.

However, the Supervisory Guidelines and policies announced by the Financial Services Agency provide that, in cases where financial institutions invest in securitised products, it is recommended that such investments be made only by those to which the originator retains some exposure to risk.

Notwithstanding the foregoing, it is usual for rating agencies to require that the originator be exposed to some risk to acquire a higher credit rating for the securitised product.

Law stated - 5 December 2025

SECURITY

Types

25 What types of collateral/security are typically granted to investors in a securitisation in your jurisdiction?

Most transactions in Japan involving the securitisation of receivables are done without granting any collateral to the investors. Such deals are based on the understanding that:

- the SPV is a single-purpose entity;
- the management of assets and cash flow of the SPV is structurally controlled;
- the SPV will not enter into any unrelated transactions with third parties; and
- the SPV will not incur any unrelated debt.

On the other hand, in the case of securitisation of real estate, if the investment method is an asset-backed loan, collateral is usually granted in favour of the lender to secure the payment of such loans. Mortgages and pledges of real estate beneficial interests are typical types of collateral granted.

Regarding other types of securities, a security interest over receivables may be created by way of either a pledge or a security assignment.

A security interest over bank accounts and trust beneficial interests may be typically created by way of a pledge, and a security interest over movable assets is typically created by way of a security assignment.

If any collateral is created to secure payments of bonds, the Secured Bonds Trust Act (Law No. 52, 1905) will apply and a trust company will need to be appointed to manage such collateral for the benefit of bond holders. However, because the requirements and restrictions under the Secured Bonds Trust Act are stringent, inflexible and cumbersome, a grant of a security interest for bonds is rarely seen in the market.

Alternatively, bonds issued by a specific purpose company can be secured by a general lien pursuant to the Securitisation Act. In such a case, the appointment of a trust company is not required, although the rights and interests granted to the holders of a general lien are relatively weak.

Law stated - 5 December 2025

Perfection

26 How is the interest of investors in a securitisation in the underlying security perfected in your jurisdiction?

The method for creating and perfecting a security interest depends on the type of security interest and the type of assets subject to the security interest.

Mortgage

To perfect a mortgage against third parties, the mortgage must be registered with the competent legal affairs bureau.

Pledge or security assignment of receivables

There are three ways to perfect a pledge or assignment:

- to send a written notice with a notarised date to the third-party debtor;
- to obtain a written consent with a notarised date from the third-party debtor; and
- to register the pledge or assignment with the competent legal affairs bureau pursuant to the Perfection Act.

Pledge over bank accounts

To perfect a pledge over a bank account, written consent with a notarised date is typically obtained from the bank at which the account is maintained.

Pledge over trust beneficial interests

To perfect a pledge over trust beneficial interests, a written consent with a notarised date is typically obtained from the trustee.

Law stated - 5 December 2025

Enforcement

27 How do investors enforce their security interest?

In general, enforcement of a security interest can be made through a judicial proceeding or private sale. The actual methods of enforcement may vary depending on the type of security and the arrangements specific to each transaction.

Law stated - 5 December 2025

Commingling risk

28 | Is commingling risk relating to collections an issue in your jurisdiction?

In a Japanese securitisation deal, the originator is usually appointed by the SPV to act as the servicer for continued collection and management of the receivables. Payments by obligors will continue to be made to the originator, and collections in respect of transferred receivables may be commingled with the originator's other funds, such as collections in respect of non-transferred receivables. If the originator or any successor servicer appointed or provided for under the servicing agreement is declared bankrupt or is subject to corporate reorganisation or civil rehabilitation proceedings while holding collections in respect of the SPV's transferred receivables, it is likely that such collections would be treated as part of the originator's bankruptcy estate or the originator's estate subject to the corporate reorganisation or civil rehabilitation proceedings (or that of the relevant subsequent servicer), and not as funds owned by the SPV. In such a situation, it is likely that the SPV would not recover the full amount of such collections.

To mitigate such risk, one or more of the following tactics is usually used:

- reduction of the time period during which the originator or the subsequent servicer actually holds the SPV's funds in its accounts;
- inclusion of a provision in the servicing agreement, providing the SPV with the right to terminate the appointment of the originator or the subsequent servicer in certain circumstances, including the petition for commencement of bankruptcy or corporate reorganisation proceedings in relation to the originator or subsequent servicer;
- establishment of an obligation requiring the originator to post a cash reserve or provide cash collateral;
- establishment of an obligation requiring the originator as servicer to pay to the SPV the scheduled collection amount prior to actual collection from obligors;
- use of separate accounts for the management of collected funds; and
- use of bank guarantees to secure the payment obligations of the originator or subsequent servicer.

Law stated - 5 December 2025

TAXATION

Originators

29 | What are the primary tax considerations for originators in your jurisdiction?

Originators will, in general, recognise gains or losses arising from the transfer of the subject assets to the securitisation vehicle. There are no measures for deferral of recognition of gains or losses for originators that are practically feasible in typical securitisation deals.

In general, if the securitisation vehicle is a trust, the subject assets that are entrusted will be deemed sold, and the originators will recognise the gains or losses when the trust beneficial interest representing the beneficial ownership of the subject assets is sold to third parties other than the originator. Accordingly, for example, if the trust beneficial interest is structured to have two-tier tranches of the preferred trust beneficial interest and the subordinated trust beneficial interest as a mechanism for credit enhancement, and if the originator retains the subordinated trust beneficial interest, then the subject assets represented by such subordinated trust beneficial interest are not deemed sold even if they were entrusted to the trust. It should be noted that, under Japanese tax laws, the tax consequences of a two-tier trust beneficial interest structure are not necessarily clear.

If the originators are Japanese corporations, such as Japanese banks, they are in general subject to Japanese corporate income taxation on the gains, at the effective rate, including national and local taxes, of 29 to 30 per cent (for Japanese corporations having stated capital of more than ¥100 million).

Law stated - 5 December 2025

Issuers

30 What are the primary tax considerations for issuers in your jurisdiction? What structures are used to avoid entity-level taxation of issuers?

The primary tax considerations for issuers are to avoid entity-level income taxation at the issuer because issuers are SPVs. To achieve this, there are many measures that are employed in practice to minimise the taxable net income of the issuer. If there is any taxable income, it is subject to Japanese corporate income taxation.

If the issuer is a special purpose company (TMK) or a listed real estate investment trust (J-REIT, which is technically not a trust but rather is an independent Japanese corporation):

- interest payable on the bonds or loans issued by the TMK or the J-REIT is deductible for its corporate income tax purposes; and
- dividends payable on the equity securities issued by the TMK or the J-REIT are also deductible for its corporate income tax purposes pursuant to certain special taxation measures if, among other requirements, more than 90 per cent of the distributable profits are distributed as dividends to the investors.

If the issuer is a limited liability company (GK) in the securitisation of real estate:

- interest payable on the bonds or loans issued by the GK is deductible for its corporate income tax purposes; and
- profit distributions payable under a silent partnership contract (TK) (ie, sort of an equity investment) are also deductible.

However, with respect to interest payable to certain foreign affiliates of the issuer, interest deduction may be limited due to special taxation measures, such as thin capitalisation rules, transfer pricing rules and earnings stripping rules. The earnings stripping rules have been tightened by the 2019 annual tax reform, so that net interest payable to third-party

foreign investors is now captured by that regime and the threshold to limit the interest deduction has been lowered to 20 per cent of earnings before interest, taxes, depreciation and amortisation for tax purposes of the issuer. Depending upon the structure of the investment, this may have a significant impact on the issuers.

In addition, especially in the case of securitisation of real estate, minimising transactional taxes is important. Applicable major transactional taxes include real estate acquisition tax and registration and licence tax. These can be avoided or substantially reduced by the issuer acquiring the trust beneficial interest representing the beneficial ownership of the real estate, rather than acquiring the fee simple title to the real estate. Also, there are special taxation measures reducing the applicable transactional taxes if a TMK or a J-REIT acquires the fee simple title to the real estate for the purpose of securitisation.

Law stated - 5 December 2025

Investors

31 | What are the primary tax considerations for investors?

The primary tax considerations for investors are the Japanese withholding tax and the regular Japanese income taxation (on a net basis), to be imposed on the payment of the yields from the investment (eg, interest and dividends). Japanese taxation on the investors substantially differs depending on the type of the instrument or securities issued, and the classification of the investors for Japanese tax purposes (ie, Japanese resident or not).

If the investor is a non-Japanese corporation having no permanent establishment in Japan for Japanese tax purposes, as a general rule, the investor will be subject to Japanese withholding tax at the following rates:

- 15.315 per cent on the interest payable on the bonds;
- 15.315 per cent (if the shares are listed) or 20.42 per cent (if the shares are not listed) on the dividends payable on the shares or other equity securities;
- 20.42 per cent on the profit distributions to be payable under the TK; and
- 20.42 per cent on the interest payable on loans.

Japanese taxation on foreign investors is finalised by the withholding tax, and there is no need to file a Japanese tax return. Tax treaties entered into between Japan and the country of tax residence of the investor may provide for exemption or a reduced rate with respect to such Japanese withholding tax. In addition, in the case of bonds, if the bonds are issued within Japan using the Japanese book-entry system, or issued outside Japan as Eurobonds, interest payable on such bonds may be exempt from Japanese withholding tax as special taxation measures, subject to compliance with certain procedural requirements.

Law stated - 5 December 2025

BANKRUPTCY

Bankruptcy remoteness

32 | How are SPVs made bankruptcy-remote?

The following methods are typically used to ensure the SPV's bankruptcy-remoteness; that is, the isolation of the SPV and its assets from the originator, the owner of the SPV or other relevant transaction parties in the event of a bankruptcy of the originator, the owner of the SPV or such other parties:

- structuring the transfer of assets to be a true sale and not a security transaction;
- ensuring that the transfer of assets from the originator to the SPV will not prejudice the interests of the originator's creditors, thereby reducing the risk that any assets so transferred will become subject to avoidance or revocation in the event the transfer is deemed to have been a fraudulent transfer;
- minimising any commingling risk;
- appointing independent directors for the SPV;
- structuring the owner of the SPV to be an independent bankruptcy-remote vehicle;
- prohibiting the SPV from engaging in any business other than the contemplated securitisation transaction, based on restrictions set forth in its articles of incorporation and other organisational documents;
- prohibiting the SPV from engaging in certain conduct, such as a merger with another entity or the hiring of employees; and
- causing the SPV and its directors or shareholders to waive its right to commence a bankruptcy proceeding, a civil rehabilitation proceeding, a corporate reorganisation proceeding or any other insolvency proceeding.

Law stated - 5 December 2025

True sale

33 | What factors would a court in your jurisdiction consider in making a determination of true sale of the underlying assets to the SPV (eg, absence of recourse for credit losses, arm's length)?

From a Japanese law perspective, 'true sale' means that the transfer of assets from the originator to the SPV will be regarded as a transfer of ownership of the assets and will not be recharacterised as an assignment for security purposes or a granting of any other security interest in these assets, even if a bankruptcy proceeding, a corporate reorganisation proceeding or some other insolvency proceeding is commenced with respect to the originator. If such recharacterisation takes place, the SPV's assets might be subject to the insolvency procedure in question.

It is critically important that a transfer of assets constitute a true sale in a case where a corporate reorganisation proceeding is commenced with respect to the originator, because the rights of secured creditors will be subject to such proceeding and payments to secured creditors will not be made until the court approves the reorganisation plan. On the other hand, under a bankruptcy or civil rehabilitation proceeding, secured creditors may have

rights of exclusive preference and, in principal, the rights of secured creditors will not be substantially affected in such proceedings.

Currently, no statutory provision or published court precedent identifies factors that determine whether an assignment of assets is a true sale. However, the following factors are generally considered when determining whether an assignment of assets constitutes a true sale:

- the intention of the parties as indicated by the relevant contracts;
- whether the originator will retain any rights in or control of the assigned assets;
- whether there is any right or obligation by the originator to repurchase the assigned assets;
- whether the originator has any rights or interests in the cashflow payments derived from the assigned assets;
- whether the transfer of the assigned assets is perfected;
- whether the originator warrants the ability of the obligors to make payments under obligations that relate to the assigned assets;
- whether the SPV will incur all losses and damages arising from defaults by obligors whose indebtedness is related to the assigned assets, and whether the originator will indemnify the SPV or its investors against such loss or damages;
- whether the purchase prices of the assigned assets are appropriate and determined based on the reasonable and fair value of the assigned assets; and
- whether the assigned assets are treated as absolute transfers in the originator's financial records and accounting books.

Law stated - 5 December 2025

Consolidation of assets and liabilities

34 What are the factors that a bankruptcy court would consider in deciding to consolidate the assets and liabilities of the originator and the SPV in your jurisdiction?

Currently, there is no such concept of consolidation in the Bankruptcy Law (Law No. 71, 1922), the Civil Rehabilitation Law (Law No. 225, 1999) or the Corporate Reorganisation Law (Law No. 154, 2002).

Therefore, if a bankruptcy, civil rehabilitation or corporate reorganisation proceeding is commenced with respect to the originator, the SPV and its assets should not be subject to such proceeding, as there is no such concept of consolidation under the relevant laws. However, if the general theory of piercing the corporate veil applies to the SPV, the SPV's status as a separate legal entity as distinguished from the originator is denied.

Law stated - 5 December 2025

UPDATE AND TRENDS

Key developments of the past year

35 Are there any rules governing securitisations pending in your jurisdiction or reforms under way, such as prohibitions on financial firms betting against the securities they package, improved disclosure and oversight of the asset-backed securities market, rules limiting bank compensation structures that incentivise risk, etc?

Amendment to Japanese risk retention rules for securitisation products

On 15 March 2019, the Japanese Financial Services Agency published certain amendments to its notices on the capital requirements for banks and certain other financial institutions, which became effective as of 31 March 2019. The amendments overhauled the methods of calculating risk-weighted assets in the case of financial institutions holding securitisation products. In particular, in the event that a financial institution holds securitisation products but is unable to confirm that the originator holds 5 per cent or more exposure concerning such securitisation products, a higher risk weight than normal (ie, triple risk weight, up to 1,250 per cent (which means full capital deduction)) shall be applicable in calculating a financial institution's risk-weighted assets unless certain exemption requirements are satisfied. The amendments will be applicable in respect of securitisation products acquired by financial institutions on or after 1 April 2019 and will not be applicable to securitisation products held by financial institutions on 31 March 2019.

In general, to meet the risk retention requirements the originator must hold 5 per cent or more of the aggregate amount of exposure of the underlying assets of the relevant securitisation. However, it should be noted that the portion of the exposure substantially not borne by the originator due to hedging such exposure with guarantees or Credit Default Swaps is to be excluded from the percentage of the exposure held by the originator. More specifically, the originator shall hold:

1. an equal portion of all tranches, the total amount of which is at least 5 per cent of the aggregate exposure of the underlying assets of the relevant securitisation;
2. all or part of the most junior tranche, the total amount of which is at least 5 per cent of the aggregate exposure of the underlying assets of the relevant securitisation;
3. if the most junior tranche is less than 5 per cent of the aggregate exposure of the underlying assets of the relevant securitisation, all of such tranche and part of other tranches, the total amount of which is at least 5 per cent of the aggregate exposure of the underlying assets of the relevant securitisation; or
4. an exposure that is equal to or greater than the exposure required to be held by the originator under the above three methods.

As an exception to the above general rule, even when a financial institution cannot confirm that the originator holds 5 per cent or more of the aggregate exposure of the underlying assets of the relevant securitisation, if the financial institution can determine that the underlying assets were not inappropriately originated, taking into consideration the relevant circumstances, such as the originator's involvement in the underlying assets or the quality

of the underlying assets, then the financial institution will not be required to apply a higher risk weight in calculating its securitisation exposure. More specifically:

- when it can be confirmed that the originator, etc, holds an exposure equal to or greater than the exposure required to be held under requirements (1) to (4) above, such as:
    - when the originator's parent company, the arranger or any other entity who was deeply involved in the structuring of the relevant securitisation holds the exposure;
    - when the originator provides credit enhancement to the subordinated portion; or
    - when random selection was conducted (eg, when the underlying assets were randomly selected from an underlying asset pool that included a large number of receivables, and the originator continues to hold all of such receivables, of the underlying asset pool other than the above selected assets, the exposure of which amounts to 5 per cent or more of the aggregate exposure of the underlying asset pool);
- when the quality of the underlying assets was analysed in depth and it can be determined that the underlying assets have not been originated inappropriately. For example, when it can be determined that the underlying assets were not originated inappropriately, relying upon objective materials, etc, by which investors may determine the quality of the underlying assets (eg, where the underlying assets of the securitisation are real estate and appropriate appraisal documents and engineering reports were made for the origination of such securitisation); or when the originator originated the securitisation products by purchasing the underlying assets from the market (such as open-market collateralised loan obligations in the United States) and it can be determined, by relying upon objective materials, etc, that the quality of the securitisation products procured in the market is not inappropriate; or
- when requirements (1) to (4) above are no longer met owing to changes in the factors surrounding the securitisation products after their acquisition, but it can be determined that the originator continues to hold the relevant exposure (eg, when the total amount of the exposure held by the originator becomes less than the required amount of exposure owing to default or prepayment of the underlying assets during the securitisation period).

The Japanese risk retention rules do not directly require that the originator or sponsor hold a certain amount of exposure and only indirectly require the same by making a rule that a higher risk weight shall be applied when financial institutions acquire securitisation products that do not comply with the risk retention rules. Therefore, practically speaking, investors in securitisation products (many of which are financial institutions) should establish a due diligence framework and confirm compliance with the Japanese risk retention rules not only at the time of acquisition of the securitisation products but also each time they are required to calculate the risk weighting of its assets for capital adequacy purposes.

Amendment to the Civil Code – new rules for the assignment of Assignment Limited Receivables

The long-awaited amendments to the Civil Code of Japan were finally approved by the Diet on 2 June 2017 and became effective on 1 April 2020. This is an epoch-making piece of legislation as the Civil Code of Japan has scarcely been amended in the 124 years since it was initially enacted in 1896. The notable amendments are, inter alia, as follows:

1. even in the event that a creditor and debtor agree that the assignment of receivables is prohibited or limited (Assignment Limited Receivables), the assignment of such receivables may be valid, but the debtor may refuse to pay the receivables, or may claim the expiry of the receivables owing to payment to the assignor or other reasons, against the assignee who knew or did not know, as a result of gross negligence, of the agreement prohibiting or limiting the assignment of receivables;
2. it is statutorily confirmed that an assignment of future receivables will be valid even if such receivables have not yet been incurred upon such assignment;
3. standard terms and conditions of contract may be validly incorporated into the parties' agreement if certain requirements are satisfied;
4. the short-term statute of limitation applicable only to specific receivables, such as doctors' or attorneys' fees, or food and drink charges owed to a restaurant or bar, will be abolished and instead receivables will expire if they are not claimed within five years from the date a creditor knew that such receivables could be claimed, or if they are not claimed within 10 years from the date a creditor was able to claim such receivables;
5. the statutorily applicable interest rate will be reduced from 5 per cent (fixed) to 3 per cent, and such interest rate will be revised according to the market interest rates from time to time;
6. an individual person's guarantee of business-related debts will be invalid unless such person's intention of guarantee is confirmed by a notarised document executed within one month prior to the execution of the guarantee agreement; and
7. the upper limit of the duration period for leasing will be changed from 20 years to 50 years.

Regarding the securitisation field, the amendments listed as items (1) and (2) above are especially important. Under the current law, the assignment of Assignment Limited Receivables is invalid unless the assignee does not know about the restriction, provided such lack of knowledge is not due to the assignee's gross negligence. Therefore, currently, funding using Assignment Limited Receivables can be structured only by a declaration of trust structure or a participation structure. However, pursuant to the amendment listed as item (1) above, it is expected that the amendment will help and facilitate companies in using their Assignment Limited Receivables as an asset for securitisation under an asset transfer structure. Further, under the current law, although there is no statutory provision to such effect, court precedents allow the assignment of future receivables. Statutory confirmation of the assignment of future receivables contributes to the stability of securitisation structures using future receivables.

Law stated - 5 December 2025

36 What legislation or government or industry initiatives are in place or contemplated to address the termination of LIBOR and transition to a substitute rate?

The Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks has been conducting discussions to facilitate market participants and interest rate benchmark users to choose and use Japanese yen interest rate benchmarks appropriately. It consists of certain market participants, such as financial institutions, institutional investors and other business corporations, and the Bank of Japan serves as its secretariat. In addition, various industry initiatives are in place to address the LIBOR termination. For example, the Japanese Bankers Association has published relevant information as well as sample interest rate fallback provisions for the use of loan documents whose current reference rate is Japanese yen LIBOR.

Law stated - 5 December 2025

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GENERAL FRAMEWORK

Legislation

1 What legislation governs securitisation in your jurisdiction? Has your jurisdiction enacted a specific securitisation law?

Securitisation has developed in Switzerland without specific supporting legislation, and there is no regulatory authority for securitisation transactions. Accordingly, the general legal framework is relevant as for any other financing transaction, such as the Swiss Code of Obligations (particularly in matters relating to the formation of the special purpose vehicle (SPV) and the transfer of receivables and the asset), general capital markets regulations and regulatory and tax regulations. However, a practice has evolved over time that ensures that securitisation transactions are viewed favourably by competent authorities being willing to issue advance ruling confirmations about the regulatory and other treatment of securitisation transactions (eg, Swiss Financial Market Supervisory Authority rulings, consumer credit regulations rulings and tax rulings).

Also, no specific listing rules apply to asset-backed securities, and the SIX Swiss Exchange generally applies the same listing rules as for issuance of bonds. However, issuing SPVs benefits from certain relaxed standards in the approval process. Also, the Swiss prospectus regime under the Swiss Financial Services Act (FinSA) provides for some (limited) special disclosure rules for ABS.

Law stated - 25 November 2025

Applicable transactions

2 Does your jurisdiction define which types of transactions constitute securitisations?

Not applicable.

Law stated - 25 November 2025

Market climate

3 How large is the market for securitisations in your jurisdiction?

There is no reliable data available that would provide for a comprehensive overview.

However, the number and volume of public securitisation transactions placed and listed in Switzerland has increased substantially in the auto lease and credit card sectors during the past couple of years. The main originators of public asset-backed security (ABS) and auto lease transactions include Cembra (formerly GE Money Bank), AMAG Leasing (leasing Volkswagen brands), Emil Frey (leasing Toyota, Jaguar and other brands) and Swisscard (credit cards). In addition, there have been an increasing number of private ABS transactions in a variety of asset classes.

As a consequence of the overall growing volume of residential and commercial mortgage loans in Switzerland, the number of mortgage-backed transactions in Switzerland is expected to increase in the future, supplementing the management of mortgage loan portfolios, which had in the past frequently served as collateral for covered bond transactions, rather than being securitised. However, covered bond transactions in Switzerland involving residential and commercial mortgage loans have also increased considerably during the past couple of years and this trend is expected to continue in the future, with one major Swiss bank having set up a new domestic covered bond programme in 2023 and placed several successful issuances thereunder since then. Also, market lending platforms continue to grow and are eagerly looking at refinancing opportunities, including ABS or ABS-like structures. In addition to that, covered bond transactions making use of other assets are increasing considerably with a first-time issuer setting up a new auto lease covered bond programme in Switzerland in 2025.

A number of private ABS transactions (ie, transactions that are refinanced through asset-backed commercial paper platforms or through direct investors or banks) have been extended and renewed. Also, the number of trade receivable securitisation transactions involving Swiss receivables or Swiss sellers, or both, has increased.

Finally, banks, in particular, regularly look at and pursue synthetic securitisation transactions in various asset categories.

Law stated - 25 November 2025

REGULATION

Regulatory authorities

4 | Which body has responsibility for the regulation of securitisation?

There is no specific regulatory authority for securitisation transactions. However, various regulatory authorities are relevant in the context of Swiss securitisation transactions, such as the Swiss Financial Market Supervisory Authority (FINMA) for certain regulatory matters (ie, confirmation of non-licensing requirements, non-consolidation in bankruptcy, non-application of anti-money laundering considerations (depending on the structure of the transaction and the underlying asset category), in each case as relevant), the prospectus offices that have been newly introduced by the Swiss Financial Services Act in 2020 and appointed by FINMA in June 2020 for prospectus approvals, the SIX Exchange Regulation of the SIX Swiss Exchange for certain other listing-related matters and cantonal regulators for consumer credit licensing, if relevant. In addition, transactions are typically presented and signed off by relevant tax authorities by way of tax ruling.

Law stated - 25 November 2025

Licensing and authorisation requirements

5 | Must originators, servicers or issuers be licensed?

No. Given that there is no specific securitisation legislation, there is no licensing requirement for originators, servicers and issuers as such.

It is, however, important to carefully analyse each securitisation structure on a case-by-case basis, particularly in light of the specific underlying assets and the business conducted by the originator.

As an example, originators active in the consumer loan business must be licensed under the Swiss Consumer Credit Act unless certain exemptions apply, such as exemptions for captive service providers. Accordingly, it is important to structure the transaction so that the issuer does not require a respective licence.

Typically, issuers do not require a licence as a bank under the Swiss Federal Banking Act, provided they are refinanced through the issuance of publicly placed (listed) bonds or privately placed notes. Also, issuers typically do not qualify as collective investment schemes under the Swiss Federal Act on Collective Investment Schemes, given the focus on refinancing through the issuance of public or private capital market instruments. Indeed, this needs to be carefully analysed and structured on a case-by-case basis.

Law stated - 25 November 2025

6 | What will the regulator consider before granting, refusing or withdrawing authorisation?

Not applicable.

Law stated - 25 November 2025

Sanctions

7 | What sanctions can the regulator impose?

Not applicable.

Law stated - 25 November 2025

Public disclosure requirements

8 | What are the public disclosure requirements for issuance of a securitisation?

There is no specific securitisation legislation in Switzerland, but the Swiss Financial Services Ordinance (FinSO) contains some limited disclosure requirements specifically relating to asset-backed security (ABS). According to these requirements, disclosure in the prospectus must include (in addition to the general disclosure requirements):

- a transaction summary, covering:
    - the general characteristics of the structure and a structure overview;

- risks related to an investment in the ABS;
- cross-references to the specific sections in the prospectus dealing with such risks; and

- a transaction overview, covering:
  - key elements of the transaction (ie, structure, parties involved and their role, cash flows, credit enhancement, etc);
  - a description of the assets that back the transaction and related risks;
  - historical key date (three years) relating to the relevant assets;
  - structural risks;
  - legal risks; and
  - other significant risks.

Accordingly, when issuing securities to the public capital market in Switzerland, the above-limited disclosure requirements as well as the general prospectus and listing requirements must be considered, depending on where and to what investor base the securities will be marketed. Of course, to the extent that Swiss securitisation transactions are placed outside of Switzerland or become otherwise subject to the EU Securitisation Regulation, the transactions must be structured to ensure compliance with the EU Securitisation Regulation or other non-Swiss regulations that might apply.

Law stated - 25 November 2025

9 What are the ongoing public disclosure requirements following a securitisation issuance?

There is no specific securitisation legislation in Switzerland. Also, neither FinSO nor the listing rules of the SIX Swiss Exchange provide for specific public disclosure requirements that relate, as such, to issuances in the framework of securitisation transactions. As with any other issuer, issuing SPVs listed on the SIX Swiss Exchange must comply with general Swiss capital market regulations, such as ad hoc publicity as per the listing rules of the SIX Swiss Exchange.

Like any other jurisdiction, it is market standard practice that servicer reports and investors' reports are provided on a monthly basis.

Finally, to the extent that any non-Swiss regulation would be applicable (such as the EU Securitisation Regulation), such regulations must, of course, be complied with.

Law stated - 25 November 2025

ELIGIBILITY

Originators

10

Outside licensing considerations, are there any restrictions on which entities can be originators?

No restrictions exist, other than licensing requirements relating to the underlying business.

Law stated - 25 November 2025

Receivables

11 What types of receivables or other assets can be securitised?

Swiss securitisation transactions have been based on:

- trade receivables;
- commodity warehouse receipts;
- auto leases and loans;
- credit card receivables;
- residential mortgage loans;
- commercial real estate loans; and
- loans to small and medium-sized businesses.

There is no class of receivables that is more likely than others to be the subject of a securitisation in Switzerland, even though the market has recently seen many public transactions involving auto leasing and credit cards.

Accordingly, any type of asset can be securitised, but general considerations around suitability of assets for securitisations transactions apply in Switzerland as well.

Covered bond transactions in Switzerland had been traditionally based on Swiss residential mortgage loans and commercial mortgage loans and, more recently, also on auto lease assets.

Law stated - 25 November 2025

Investors

12 Are there any limitations on the classes of investors that can participate in an offering in a securitisation transaction?

No. Transactions that are offered to the Swiss public capital market can, in principle, be offered to any investor, including retail investors. However, the financial intermediaries who are involved in the placement of the notes will need to comply with their duties under financial market laws (such as the Financial Services Act (FinSA)), including in relation to the assessment of appropriateness and suitability of such products for the investors, as applicable. In addition, it might be that certain lead managers apply (internal) guidelines in the distribution process. Further restrictions may apply under relevant foreign capital

market regulations that would have to be complied with in connection with any placement of securitisation transactions outside Switzerland.

Law stated - 25 November 2025

Custodians/servicers

13 | Who may act as custodian, account bank and portfolio administrator or servicer for the securitised assets and the securities?

According to the SIX Swiss Exchange's listing rules, the principal paying agent must qualify as a Swiss bank or a Swiss broker or dealer licensed by the Swiss Financial Market Supervisory Authority. As a matter of Swiss law and on the basis that securitisation transactions typically do not qualify as collective investment schemes, there is no other mandatory requirement in relation to the custodian, the trustee or the portfolio administrator or servicer.

Nonetheless, the various roles are subject to rating agency requirements (in the case of rated deals) or subject to considerations and requests from investors.

Law stated - 25 November 2025

Public-sector involvement

14 | Are there any special considerations for securitisations involving receivables with a public-sector element?

Except in relation to the enforceability of the receivables, no special considerations apply for public sector receivables. In the due diligence process, parties should focus in particular (as for any other securitisation transaction) on transferability and enforceability of the receivables as well as immunity considerations of the respective public institution.

Law stated - 25 November 2025

TRANSACTIONAL ISSUES

SPV forms

15 | Which forms can special purpose vehicles take in a securitisation transaction?

First, it should be decided whether to use a Swiss vehicle or a foreign vehicle. Various considerations should be made, depending on the underlying asset.

Generally, it will be very difficult to use non-Swiss SPVs where the underlying asset relates to real estate located in Switzerland, given that cantonal withholding taxes may be incurred on any interest payment secured by Swiss real estate and due to restrictions under the

Federal Act on the Acquisition of Real Estate by Persons Abroad (known as the Lex Koller) that will have to be considered.

Also, it might be the case that the transfer of a receivable or an asset abroad is not desirable for other reasons, such as data protection considerations, particularly where the underlying documentation does not provide for a proper waiver of data protection.

Further, interest payments on debt instruments issued by a Swiss vehicle directly to multiple investors attract Swiss withholding tax at a rate of 35 per cent. While Swiss withholding tax is generally recoverable, the process for doing so might be burdensome for non-Swiss investors and even a Swiss investor would suffer a delay in recovering the withholding tax. If an investor is located in a jurisdiction that does not benefit from favourable double tax treaties or does not otherwise benefit from treaty protection (such as tax-transparent funds), Swiss withholding tax might not be fully recoverable, if at all. Swiss withholding tax can be structured away if a non-Swiss vehicle is used. However, this adds much complexity to the structuring process because there will also be a strong focus on the true sale analysis from a tax perspective.

Finally, Swiss originators that do not form a presence abroad normally have the inclination to go with a Swiss SPV for cost-efficiency and organisational purposes.

In Switzerland, an SPV may take the form of a limited liability stock corporation (AG) or a limited liability company (GmbH).

Law stated - 25 November 2025

SPV formation process

16 | What is involved in forming the different types of SPVs in your jurisdiction?

The formation of an AG or GmbH is relatively straightforward and takes between two and four weeks, depending on the relevant cantonal commercial register involved. Minimum capitalisation for the AG is 100,000 Swiss francs and for the GmbH 20,000 Swiss francs. This is, however, often irrelevant, because originators frequently hold equity pieces instead. Formation costs are minimal and would not exceed a couple of thousand Swiss francs.

Typically, Swiss SPVs are held by the respective originator (given that availability of charitable trust structures or similar structures is limited in Switzerland), but some rating agencies request the implementation of golden shareholder structures that provide the (independent) golden shareholder or shareholders with some control (veto rights) at the level of the shareholders' meeting. However, accounting considerations may require the SPV to be held by fully independent shareholders. Essentially, all transactions involving Swiss SPVs provide for an independent director structure giving the independent director some control (veto rights) at board level.

Law stated - 25 November 2025

Governing law

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17 | Is it possible to stipulate which jurisdiction's law applies to the assignment of receivables to the SPV?

Yes. Under Swiss conflict-of-law rules, the transfer and assignment of a right or a receivable can generally be governed by the law chosen by the parties concerned. However, according to article 145 of the Swiss Private International Law Act, the choice of a law to govern the assignment that is different from the law that is governing the underlying right or receivable may not be asserted against the underlying obligor under the assigned receivable, unless the obligor agreed to the choice of law. Therefore, consent being absent, the general approach is to have the assignment and transfer governed by the law of the underlying right or receivable.

Law stated - 25 November 2025

Asset acquisition and transfer

18 | May an SPV acquire new assets or transfer its assets after issuance of its securities? Under what conditions?

Yes. Revolving securitisation transactions involving the ongoing acquisition of new assets to the SPV replenishing its asset pool are quite common in Switzerland. There are no specific conditions, except conditions inherent to the transaction such as:

- compliance with eligibility criteria;
- compliance with concentration limits;
- absence of performance-trigger events; or
- absence of other early amortisation events.

While continued acquisition of assets is often seen in Swiss transactions, the transfer of assets by the SPV after the issuance of its securities is generally limited by standard non-disposal undertakings. Such non-disposal undertakings allow the SPV to dispose of assets held by it in compliance with the relevant collections' policies only, or in compliance with, the transaction documents (eg, mandatory repurchases). Additionally, the corporate purpose of SPVs is typically limited so that the SPV may only contract within the scope of the transaction documents. Accordingly, the limited corporate purpose limits the risk that the asset SPV will dispose of its assets in breach of the non-disposal undertakings.

Law stated - 25 November 2025

Registration

19 | What are the registration requirements for a securitisation?

There are no registration requirements as such, but the SPV (as any other legal entity) must be registered with the competent commercial register. Also, if the originator is a regulated entity (such as a licensed bank), further approval requirements may apply. For public

transactions capital market regulations apply, which, however, do not treat securitisation transactions differently.

Law stated - 25 November 2025

Obligor notification

20 | Must obligors be informed of the securitisation? How is notification effected?

Provided that the underlying agreements between the obligors and the originator allow for the free assignment and transfer of the receivable or relevant asset, the obligors do not need to be informed of the assignment and transfer and the securitisation accordingly. However, prior to notification, the obligors may validly discharge their obligations by paying to the originator (acting on an undisclosed basis as servicer), and in the event of bankruptcy of the originator such payments would form part of the bankrupt estate of the originator, until the obligors are notified. Also, a valid and unconditional assignment and transfer to the SPV requires that the SPV may notify the obligors at any point in time, even when it is the general understanding of the parties that obligors shall only be notified on occurrence of a specific notification event. To be on the safe side, it is recommended that the names and addresses of obligors are provided to the SPV. Also, the SPV must be granted the contractual right to notify obligors prior to the occurrence of a notification event.

Law stated - 25 November 2025

21 | What confidentiality and data protection measures are required to protect obligors in a securitisation? Is waiver of confidentiality possible?

Generally, a waiver of confidentiality and data protection is valid under Swiss law, even though the special requirements of the Swiss Data Protection Act and other relevant legislation must be followed.

Special considerations must apply if the originator is subject to special confidentiality obligations, such as Swiss banking secrecy. Even though a waiver is generally valid, some originators apply a more severe standard as a matter of policy by using data trustee structures in particular, where information would otherwise be transferred abroad.

Law stated - 25 November 2025

Credit rating agencies

22 | Are there any rules regulating the relationship between credit rating agencies and issuers? What factors do ratings agencies focus on when rating securitised issuances?

In Switzerland, the relationship between rating agencies and issuer is generally governed by the underlying engagement. It appears that the focus of rating agencies is not really different from the focus they apply in other jurisdictions. Accordingly, rating agencies focus

on the performance of the underlying assets, such as default ratios, delinquency ratios and the underlying security. Another focus of rating agencies is generally the solvency of the servicer and the ability of the servicer to service the portfolio for the SPV (including due diligence on systems and processes). Undoubtedly, the focus may shift depending on the underlying asset. In addition, rating agencies focus on legal structure and any legal pitfalls, such as the true sale analysis in true sale transactions and the bankruptcy-remoteness of the SPV.

Law stated - 25 November 2025

Directors' and officers' duties

23 What are the chief duties of directors and officers of SPVs? Must they be independent of the originator and owner of the SPV?

The board members (or directors) of the AG or the directors of a Swiss GmbH are responsible for the overall management and supervision of the company and directors may be held liable according to article 754 et seq of the Swiss Code of Obligations for the intentional or negligent breach of their duties.

This duty includes:

- the overall direction of the company and issuing the necessary directives;
- determining the organisational structure of the company;
- appointing and dismissing the persons entrusted with management and representation, and determining the method of signature;
- ultimate supervision of the persons entrusted with company management;
- organisation of accounting, financial control and financial planning, to the extent that the latter is necessary for management of the company;
- drawing up the annual report and the remuneration report;
- preparing for the general meeting and executing its decisions; and
- notifying the judiciary should the company become over-indebted.

More generally, pursuant to Swiss corporate law, directors have the duty to act in the company's best interest. The best interest of a company is measured, inter alia, against a company's business purpose, which, in the context of a securitisation transaction, is typically limited to the entering into and the performance of its obligations under the transaction documents. Any action outside of that scope might expose a director to liability. These duties are owed to the company. Directors may be held liable not only towards the company but also towards shareholders and creditors of the company for any damage caused by an intentional or negligent breach of duties. Negligence covers all forms of negligence, including simple negligence in complying with a director's duties.

There is no Swiss legislation suggesting that directors need to be independent, but it should be noted that the duty of care is always owed to the company, rather than to the shareholder or the originator.

Also, as mentioned above, it is generally required of rating agencies and investors that at least one board member is independent from the originator. Further independence requirements may be imposed, depending on the target accounting structure.

Finally, if a transaction must receive a specific accounting treatment (eg, off-balance sheet treatment), further requirements as to the independency of directors and officers might apply.

Law stated - 25 November 2025

Risk exposure

24 Are there regulations requiring originators and arrangers to retain some exposure to risk in a securitisation?

There are no risk retention rules in Switzerland. In particular, article 6(1) of the European Union regulation 2017/2402 has not been adopted by Switzerland and transposed into Swiss law.

However, for the purposes of not negatively affecting distribution, a number of transactions impose covenants on the originator to retain, on an ongoing basis, a material net economic interest in the transaction in an amount equal to at least 5 per cent (or a higher percentage as may be required from time to time in accordance with the applicable EU risk retention rules).

Law stated - 25 November 2025

SECURITY

Types

25 What types of collateral/security are typically granted to investors in a securitisation in your jurisdiction?

Typically, investors ask for a comprehensive security package over the assets held by the SPV, even though an investor should be able to rely on its (exclusive) indirect access to the assets held by the SPV on the basis of the bankruptcy remoteness analysis that applies to an SPV.

Therefore, security packages often include the underlying receivables, bank accounts and claims under transaction agreements. However, it should be noted that some transactions have been structured without a security package to overcome a negative tax treatment or other obstacles. In those transactions, the bankruptcy-remoteness analysis was considered to be robust enough for investors and rating agencies to rely on an unsecured structure.

Law stated - 25 November 2025

Perfection

26 | How is the interest of investors in a securitisation in the underlying security perfected in your jurisdiction?

In relation to receivables and bank accounts, the execution of a security assignment agreement by the parties is sufficient to perfect the security interest in the receivables and the bank accounts. No notification is required, even though it is standard to notify the account bank, which is normally involved in the transaction in any event. However, prior to notification of the obligors, the obligors may validly discharge their obligations by paying the originator or the SPV, and in the event of bankruptcy over the SPV, such payments would form part of the bankrupt estate of the SPV, until the obligors are notified.

Law stated - 25 November 2025

Enforcement

27 | How do investors enforce their security interest?

Given that security interest is normally held by a security trustee, enforcement steps are to be initiated by the security trustee and vary depending on the nature of the security interest. Enforcement in a receivable that is assigned for security purposes may be pursued by simply collecting the receivable from the obligor or selling a portfolio of receivables to a third-party investor.

Law stated - 25 November 2025

Commingling risk

28 | Is commingling risk relating to collections an issue in your jurisdiction?

Commingling is generally considered to be a risk in Swiss securitisation transactions because collections held in the originator's or servicer's account would form part of the bankrupt estate in a bankruptcy scenario, unless previously swept into the SPV.

Commingling risk is typically addressed by imposing relatively short time periods to sweep collections into the SPV's collection account. Some transactions provide for shortened time periods to sweep the collections on and after the occurrence of certain commingling risk triggers.

Because the commingling risk falls away as soon as obligors pay directly into a collection account held by the SPV, notification events are typically structured to occur at a relatively early stage in the process so that obligors may be notified well ahead of an originator's potential bankruptcy.

Commingling risk is further mitigated by setting up servicing facilitator or even (warm or cold) back-up servicer structures, aimed at keeping the redirection period (ie, the time

period needed to make obligors pay directly into an SPV-held collection account) as short as possible.

Finally, rating agencies and investors sometimes ask for commingling reserves. The reserves' size depends on the expected average amount of collections held in the collection account (calculated on the cash-flow model basis) of the originator and the expected redirection period.

Law stated - 25 November 2025

TAXATION

Originators

29 | What are the primary tax considerations for originators in your jurisdiction?

From an originator's overall tax perspective, it is, among other things, absolutely imperative that:

- the respective assets or receivables can be transferred to the issuer without accelerating and triggering any income taxes; and
- the profit potential associated with the underlying business remains with the originator.

For lack of specific tax legislation or tax guidelines, or both, securitisation transactions need to be presented and signed off by the relevant tax authorities by way of advance tax rulings. Typically, a (separate) VAT ruling will cover the following topics:

- VAT (non-) taxation of the transfer of assets or receivables;
- tax point acceleration with respect to VAT due on supplies with respect to transferred assets; and
- receivables and bad debt relief.

Law stated - 25 November 2025

Issuers

30 | What are the primary tax considerations for issuers in your jurisdiction? What structures are used to avoid entity-level taxation of issuers?

If the transaction involves a Swiss issuer, it is, among other things, imperative that the additional entity-level corporate income and net equity taxes, which cannot be structured away completely, are kept at a (negligible) minimum. In practice, the effective tax burden can be reduced to a few thousand Swiss francs per year, subject to proper tax structuring. For lack of specific tax legislation or tax guidelines, or both, securitisation transactions need to be presented and signed off by the relevant tax authorities by way of advance tax rulings. Typically, a (separate) VAT ruling will cover the following topics:

- mitigation of VAT costs or leakage on VAT-loaded bought-in services, or both, including servicing; and
- mitigation of joint and several liability issues relating to VAT unpaid by the originator with respect to transferred assets or receivables.

Law stated - 25 November 2025

Investors

31 | What are the primary tax considerations for investors?

Interest payments on debt instruments (such as bonds) issued by a Swiss (securitisation) vehicle directly to widely spread investors attract Swiss withholding tax at a rate of 35 per cent. While Swiss withholding tax is generally recoverable, the process for doing so might be burdensome for non-Swiss investors, and even a Swiss investor would suffer a delay in recovering the withholding tax. In the event that an investor is located in a jurisdiction that does not benefit from a favourable double tax treaty with Switzerland or does not otherwise benefit from treaty protection (typically such as tax-transparent funds), Swiss withholding tax might not be fully recoverable, or not be recoverable at all.

Swiss withholding tax can be structured away in the event that a non-Swiss vehicle is used. However, this adds a lot of complexity to the structuring process, given that there will also be a strong focus on the true sale analysis from a tax perspective.

Law stated - 25 November 2025

BANKRUPTCY

Bankruptcy remoteness

32 | How are SPVs made bankruptcy-remote?

Bankruptcy-remoteness is generally achieved by the limited corporate purpose of the SPV and limited recourse and non-petition provisions to which counterparties to the SPV are asked to sign up. In addition, all parties contracting with the SPV are asked to sign up to waiver set-off provisions.

In addition, it should be noted that as a matter of Swiss corporate law, the bankruptcy of a shareholder of the SPV will not lead to the bankruptcy or liquidation of the SPV itself. Rather, a shareholder bankruptcy would result in the SPV's shares falling into the bankruptcy estate of the shareholder and would be sold in the course of such liquidation or bankruptcy. Any such transfer of shares in the SPV would not legally affect the contractual obligations of the SPV under the transaction documents. Also, there is no concept of substantive consolidation under Swiss law (subject to extraordinary cases, such as fraud and abuse of rights), and a bankruptcy of an SPV shareholder would, as a matter of Swiss law, not result in a consolidation of its assets and liabilities with those of the SPV.

Law stated - 25 November 2025

True sale

33 What factors would a court in your jurisdiction consider in making a determination of true sale of the underlying assets to the SPV (eg, absence of recourse for credit losses, arm's length)?

Ultimately, a court would consider the actual mutual will of the parties to a specific agreement. Accordingly, the analysis is highly factual, but one of the important factors that will be considered by a court is the effective transfer of the collection risk relating to a receivable.

Accordingly, any repurchase obligations going beyond the repurchase of ineligible receivables during transfer to the SPV can be critical. However, repurchase options are generally less problematic, but should be considered on a case-by-case basis. Finally, the arm's-length nature of the transfer will also be considered.

Law stated - 25 November 2025

Consolidation of assets and liabilities

34 What are the factors that a bankruptcy court would consider in deciding to consolidate the assets and liabilities of the originator and the SPV in your jurisdiction?

There is no concept of substantive consolidation under Swiss bankruptcy law, except in extraordinary cases, such as fraud and rights' abuse.

Law stated - 25 November 2025

UPDATE AND TRENDS

Key developments of the past year

35 Are there any rules governing securitisations pending in your jurisdiction or reforms under way, such as prohibitions on financial firms betting against the securities they package, improved disclosure and oversight of the asset-backed securities market, rules limiting bank compensation structures that incentivise risk, etc?

There have been no such developments in the past year that are specifically related to securitisation transactions.

Law stated - 25 November 2025

36 What legislation or government or industry initiatives are in place or contemplated to address the termination of LIBOR and transition to a substitute rate?

In 2013, the National Working Group on Swiss Franc Reference Rates (NWG) was created by the Swiss National Bank. The NWG is the key forum to foster the transition to Swiss Average Rate Overnight (SARON) and to discuss the latest international developments. As from October 2017, the NWG recommended SARON as the alternative to Swiss franc London Interbank Offered Rate (LIBOR) and established two sub-working groups to focus on a possible transition away from LIBOR in loan and deposit markets as well as in derivatives and capital markets. Since then, the NWG had issued multiple recommendations that were largely accepted in the Swiss market. The LIBOR was discontinued for Swiss franc by the end of 2021.

Law stated - 25 November 2025

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UPDATE AND TRENDS

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GENERAL FRAMEWORK

Legislation

1 What legislation governs securitisation in your jurisdiction? Has your jurisdiction enacted a specific securitisation law?

Securitisation in Taiwan, depending on the nature of the underlying assets, is mainly governed by the Financial Assets Securitisation Act (FASA) (as amended on 4 June 2013) and the Real Estate Securitisation Act (RESA) (as amended on 6 December 2016) and certain relevant regulations promulgated pursuant to the authorisations in the FASA and RESA. As indicated by the names of the Acts, the FASA provides for the securitisation of financial assets, mainly the assets arising from banking operations, such as residential loans and car loans; on the other hand, the RESA provides for the securitisation of real properties or rights arising from real properties. The competent authority of both the FASA and the RESA is the Financial Supervisory Commission ROC (Taiwan) (FSC).

Law stated - 16 December 2025

Applicable transactions

2 Does your jurisdiction define which types of transactions constitute securitisations?

The definition of 'securitisation' under the FASA refers to the act that the originator entrusts the assets to a trustee or transfers the assets to a special purpose company (SPC) pursuant to the FASA, whereby the trustee or SPC issues beneficiary certificates or asset-backed securities on the basis of such assets to raise funds.

The definition of 'securitisation' under the RESA refers to the act by which a trustee establishes a real estate investment trust (REIT) or real estate asset trust pursuant to the provisions of the RESA, and acquires funds from issuing beneficiary securities to non-specific persons through public offering or delivering beneficiary securities to specific persons through private placement.

Law stated - 16 December 2025

Market climate

3 How large is the market for securitisations in your jurisdiction?

Before 2008, Taiwan's securitisation market was very vibrant. However, after the 2008 financial crisis, due to investor concerns about such products and regulatory authorities worrying that the issuance of securitised products would fuel rising property prices (mainly because residential mortgage-backed security would help banks take real mortgage loans off balance sheets, allowing banks to provide more funds for real estate transactions), Taiwan's securitisation market came to a standstill. The number of cases each year has been limited to one or two at most since 2008.

Law stated - 16 December 2025

REGULATION

Regulatory authorities

4 | Which body has responsibility for the regulation of securitisation?

The Financial Assets Securitisation Act (FASA) and the Real Estate Securitisation Act (RESA) are formulated by the Legislative Yuan (the legislative body of Taiwan), and the relevant regulations and rulings are publicly announced and issued by the competent authority (the Financial Supervisory Commission ROC (Taiwan) (FSC)) of the two Acts.

Law stated - 16 December 2025

Licensing and authorisation requirements

5 | Must originators, servicers or issuers be licensed?

With respect to the originator under the FASA, in principle, the originator must be a financial institution, but if approved by the FSC, it can also be a non-financial institution. In practice, there are manufacturing companies acting as the originator using their accounts receivable as underlying assets for securitisation.

With respect to the trustee (as the issuer of the relevant beneficiary certificates), pursuant to the FASA, the trustee for a FASA securitisation transaction shall be a trust enterprise (in practice, usually the banks). Although the RESA, unlike the FASA, does not expressly provide that the trustee (as the issuer of the relevant beneficiary certificates) shall be a trust enterprise, in practice the trustee of a REIT or real estate asset trust (REAT) securitisation is always a bank.

Law stated - 16 December 2025

6 | What will the regulator consider before granting, refusing or withdrawing authorisation?

For review of the securitisation applications, the FSC has promulgated two regulations (in relation to the FASA, the Regulations Governing the Issuance of Beneficiary Certificates by a Trustee and Asset-Backed Securities by Special Purpose Company (as amended on 8 April 2019); in relation to the RESA, the Regulations Governing the Public Offering or Private Placement of REIT and REAT Beneficiary Securities by a Trustee (as amended on 8 April 2019), collectively Review Regulations) to govern the required documents and procedures for the FSC to review and approve the applications.

The Review Regulations expressly provide the situations that the FSC will disapprove the applications or withdraw its approval. From the situations in which approval is not

granted or is revoked, we can generally understand the factors that the FSC may consider. Procedurally, it is generally due to the failure to provide the documents or information required by the FSC. Substantively, the FSC is mainly concerned with whether the relevant issuance matters and conditions are unfavourable to investors (in practice, the Taiwan competent authority is most concerned with investor protection).

Law stated - 16 December 2025

Sanctions

7 | What sanctions can the regulator impose?

Violating the Acts may result in criminal liability and administrative penalties. For example, with respect to the criminal liability, if a trustee issues beneficiary certificates without the FSC's approval, the responsible persons of such act shall be punished with imprisonment for not less than one year and not more than seven years, and a criminal fine of not more than NT$10 million. And, with respect to the administrative penalties, the trustee is obligated to submit the liquidation statement and report regarding the asset trust securitisation plan to the competent authority within 30 days of the implementation of said plan is complete. If the trustee misses such deadline, it will be subject to an administrative fine of not less than NT$1 million) and not more than NT$5 million.

Law stated - 16 December 2025

Public disclosure requirements

8 | What are the public disclosure requirements for issuance of a securitisation?

In relation to the FASA securitisation, after the obtaining of the approval and prior to the entrustment or the transfer of the assets, the originator shall make announcements of the variety, quantity and content of the major assets entrusted to the trustee or transferred to the SPC in accordance with the provisions of the FASA for three consecutive days in the daily local newspapers circulated at the place of its principal office or in other ways prescribed by the competent authority. The originator who fails to make the announcement as described above or has made announcements not in compliance with the requirement prescribed by the competent authority shall not hold the trust or transfer against a third party.

Law stated - 16 December 2025

9 | What are the ongoing public disclosure requirements following a securitisation issuance?

The major ongoing public disclosure requirements will be the disclosure of the financial information of the trust (such as the balance sheet, income statements and the report on the management and utilisation of the entrusted assets).

Law stated - 16 December 2025

ELIGIBILITY

Originators

10 Outside licensing considerations, are there any restrictions on which entities can be originators?

With respect to the originator under the Financial Assets Securitisation Act (FASA), in principle, the originator must be a financial institution, but if approved by Financial Supervisory Commission ROC (Taiwan) (FSC), it can also be a non-financial institution. In practice, there are manufacturing companies acting as the originator using their accounts receivable as underlying assets for securitisation.

Law stated - 16 December 2025

Receivables

11 What types of receivables or other assets can be securitised?

Pursuant to the FASA, the 'financial assets' under the FASA include:

- rights under automobile loans or other loans secured by movable properties, together with their respective security interests;
- rights under residential loans or other loans secured by real properties, together with their respective security interests;
- rights under leases, credit cards, accounts receivable, or other monetary rights;
- beneficial rights arising from a trust agreement entered into by and between an originator and a trust enterprise with regard to the assets as referred to above; or
- any other rights or claims as approved by the FSC.

Pursuant to the RESA, the assets that are qualified to be securitised include: (1) real estate (including land, buildings, roads, bridges, tunnels, rails, wharfs, parking lots, as well as other structures of economic value affixed to land and appended facilities thereto); (2) related rights of real estate (including superficies and other rights approved by the relevant competent authority); and (3) real estate related securities (beneficiary securities or asset-backed securities issued or delivered by a trustee or a special purpose company (SPC) in accordance with the RESA or the FASA, where the asset pool contains real estate, related rights of real estate or mortgage secured by real estate).

Law stated - 16 December 2025

Investors

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12 Are there any limitations on the classes of investors that can participate in an offering in a securitisation transaction?

There is no limitation on the investors in the public officer securitisations but the investors in a private placement securitisation are limited to the qualified investors, including: (1) banks, bills finance enterprises, trust enterprises, insurance enterprises, securities enterprises or other juristic persons or institutions approved by the competent authority; and (2) natural persons, juristic persons or funds meeting conditions set by the competent authority.

Law stated - 16 December 2025

Custodians/servicers

13 Who may act as custodian, account bank and portfolio administrator or servicer for the securitised assets and the securities?

According to the FASA and Real Estate Securitisation Act (RESA), the titles of the underlying assets (including the related security) shall be entrusted into a trustee (in the trust structure) or transferred to a SPC (in the special purpose company structure). Therefore, the underlying assets will be held by the trustee or SPC directly and the trustee or SPC will be the security holder of the related security. In this regard, as of today, all of the trustees in all securitisation transactions in local market are the banks having a trust enterprise licence. By the way, although under the FASA, a FASA securitisation could be structured under an SPC structure, to date no FASA securitisation has been structured in the form of an SPC structure.

With respect to the account bank, since the trustees are the banks, the trustee might also act as the account bank.

With respect to the management of the underlying assets, usually the originator will act as the servicer of the entrusted assets. Further, since the management and maintenance of the real estate involve more professional knowledge, under the RESA, there will be a separate real estate management institution responsible for the management and disposal of the entrusted real estate.

Law stated - 16 December 2025

Public-sector involvement

14 Are there any special considerations for securitisations involving receivables with a public-sector element?

No, there are no special considerations for securitisations involving receivables with a public-sector element.

Law stated - 16 December 2025

TRANSACTIONAL ISSUES

SPV forms

15 | Which forms can special purpose vehicles take in a securitisation transaction?

For the Financial Assets Securitisation Act (FASA) securitisation, the special purpose vehicles could be either a trust or a special purpose company. However, as to date, no FASA securitisation has been structured in the form of a special purpose company (SPC) structure.

For the Real Estate Securitisation Act (RESA) securitisation, the only special purpose vehicle that is recognised by the RESA is the trust.

Law stated - 16 December 2025

SPV formation process

16 | What is involved in forming the different types of SPVs in your jurisdiction?

Since a trust is a contractual relationship, compared to the SPC structure, a trust is a more time- and cost-saving SPV structure under Taiwan law. Further, as the promoter of an SPC is limited to the financial institutions, additional taxes will be imposed under the SPC structure and there are also some substantial weaknesses, all these factors lead to the SPC structure not being adopted by the market.

Law stated - 16 December 2025

Governing law

17 | Is it possible to stipulate which jurisdiction's law applies to the assignment of receivables to the SPV?

Since all of the assets are created in accordance with the Taiwan law or located in Taiwan, the law to govern the entrustment or transfer of the underlying assets shall be Taiwan law.

Law stated - 16 December 2025

Asset acquisition and transfer

18 | May an SPV acquire new assets or transfer its assets after issuance of its securities? Under what conditions?

According to the FASA and RESA, this is permitted. In theory, the funds for such acquisition or transfer of additional will come from the issuance of the additional beneficiary certificates or the borrowing from the banks. In the former situation, the trustee needs to obtain an

additional approval from Financial Supervisory Commission ROC (Taiwan) (FSC). On the other hand, in the latter situation, the relevant trust agreement shall permit the trustee to borrow the money from the banks for such purpose.

Law stated - 16 December 2025

Registration

19 | What are the registration requirements for a securitisation?

No registration requirement for the issuance of the beneficiary certificates under the securitisation is required – only the approval from the FSC is required. However, if the underlying assets is registrable assets, the trust registration (meaning registering such asset as an entrusted assets in the name of the trustee) will be required.

Law stated - 16 December 2025

Obligor notification

20 | Must obligors be informed of the securitisation? How is notification effected?

Under Taiwan law, without notification to the obligor of a claim (such as the loans or accounts receivables), the assignment or transfer of such claim cannot be against the relevant obligor. However, since it might not be practicable for the trustee or originator to notify all obligors of the assignment or transfer of the relevant rights, the FASA permits that when the originator entrusts the assets to the trustee or transfer the assets to the SPC in accordance with the FASA, the transfer of rights shall not be held valid against the obligor unless the obligor has been notified of such transfer or a certificate evidencing the announcement (meaning that the originator shall make announcements of the variety, quantity, and content of the major assets entrusted to the trustee or transferred to the SPC in accordance with the FASA for three consecutive days in the daily local newspapers circulated at the place of its principal office or in other ways prescribed by the competent authority) has been mailed to the obligor, except for the following circumstances:

- the originator is appointed or entrusted by the trustee or the SPC as the servicer to collect the rights from the obligor and such appointment or entrustment has been announced pursuant to the FASA; or
- the originator and the obligor have entered into a contract under which it can use other means to replace the notification or mailing of the certificate of announcement as required under the FASA.

Law stated - 16 December 2025

21 | What confidentiality and data protection measures are required to protect obligors in a securitisation? Is waiver of confidentiality possible?

There is no such provision under the FASA and the RESA. However, since the trustees are the banks, they will subject to the confidentiality obligations under the Banking Act (as amended on 28 June 2023) and the requirements under the Personal Data Projection Act (as amended on 31 May 2023). Given the above, a waiver of confidentiality might not be possible under the current regulatory regime. In local banking practice, it is common that the relevant financing documents entered into by an originator with its customers would include a clause providing express consent for disclosure and use of the relevant information for the purpose of securitisation transactions.

Law stated - 16 December 2025

Credit rating agencies

22 Are there any rules regulating the relationship between credit rating agencies and issuers? What factors do ratings agencies focus on when rating securitised issuances?

There is no such provision under the FASA and the RESA. However, under the FASA, if the beneficiary certificates will be publicly offered, such beneficiary certificates shall have to meet certain rating requirements.

The main factor that credit ratings care about is the likelihood of the beneficiary certificates being compensated. Therefore, in practice, credit rating agencies are concerned with the quality of underlying assets and whether any credit enhancement is provided to raise the credit rating level, and if so, whether the method of such credit enhancement is sufficient.

Law stated - 16 December 2025

Directors' and officers' duties

23 What are the chief duties of directors and officers of SPVs? Must they be independent of the originator and owner of the SPV?

In theory, the director and officer of a trustee or SPC do not have direct liabilities to the investors and they shall only owe the fiduciary duty or employee liability to the trustee or SPC.

The law requests that the SPV shall not be the originator itself or the originator's affiliate. In this situation, whether the directors or officers of a trustee or SPC might affect the determination of whether the SPV is the originator itself or the originator's affiliate.

Law stated - 16 December 2025

Risk exposure

24 Are there regulations requiring originators and arrangers to retain some exposure to risk in a securitisation?

There is no such provision under the FASA and the RESA.

Law stated - 16 December 2025

SECURITY

Types

25 | What types of collateral/security are typically granted to investors in a securitisation in your jurisdiction?

Under the Taiwan securitisation regime, the investors are the holders of the beneficiary certificates issued by a trustee and do not have any direct security interests over the underlying assets.

Law stated - 16 December 2025

Perfection

26 | How is the interest of investors in a securitisation in the underlying security perfected in your jurisdiction?

Since the title of the underlying assets will be entrusted to the trustee, the relevant security interests over the underlying assets, by operation of law, will automatically transferred to the trustee simultaneously. Taking the real estate mortgage loan as an example, once the loan is entrusted to the trustee, the related real estate mortgage will also be transferred to the trustee, provided that for enforcement purposes, the trustee will still need to register it as the holder of such real estate mortgage.

Law stated - 16 December 2025

Enforcement

27 | How do investors enforce their security interest?

This is non-applicable as the investors will not hold any security interest.

Law stated - 16 December 2025

Commingling risk

28 | Is commingling risk relating to collections an issue in your jurisdiction?

This is non-applicable as the investors will not hold any security interest.

Law stated - 16 December 2025

TAXATION

Originators

29 | What are the primary tax considerations for originators in your jurisdiction?

Since the entrustment of the assets to the trustee will be deemed as the disposal of such assets, the originator might be subject to income tax for the gain from such disposal.

Law stated - 16 December 2025

Issuers

30 | What are the primary tax considerations for issuers in your jurisdiction? What structures are used to avoid entity-level taxation of issuers?

For acting as trustee in a securitisation, a trustee will charge service fees for such services and, therefore, it shall pay income tax for such service fees.

Law stated - 16 December 2025

Investors

31 | What are the primary tax considerations for investors?

Investors need to pay security transaction tax for their sale of the beneficiary certificates. In addition, the investors have to pay income tax for the dividends from their own beneficiary certificates.

Law stated - 16 December 2025

BANKRUPTCY

Bankruptcy remoteness

32 | How are SPVs made bankruptcy-remote?

Bankruptcy remoteness arrangement is currently provided under the Trust Act (as amended on 30 December 2009) of Taiwan, rather than under the Financial Assets Securitisation Act and Real Estate Securitisation Act. According to the Trust Act, once an asset is entrusted to a trustee and the relevant formalities for asset transfer have been completed, the title of such asset will be vested in the trustee. The creditors of the trustor (the originator) are prohibited from taking enforcement actions against the entrusted assets

unless such enforcement is based on a right over the entrusted asset that exists before the entrustment, or otherwise allowed by other applicable laws.

Law stated - 16 December 2025

True sale

33 What factors would a court in your jurisdiction consider in making a determination of true sale of the underlying assets to the SPV (eg, absence of recourse for credit losses, arm's length)?

There is no concept of 'true sale' under Taiwanese law. However, it is generally understood that the entrustment of assets for securitisation purpose is a 'true sale' when there is no risk of cancellation (or claw-back) of such entrustment.

Law stated - 16 December 2025

Consolidation of assets and liabilities

34 What are the factors that a bankruptcy court would consider in deciding to consolidate the assets and liabilities of the originator and the SPV in your jurisdiction?

Normally, the Taiwanese courts would consider the following factors:

- whether the value received by the originator represents an arm's length commercial transaction; and
- whether, upon the entrustment, existing creditors of the originator is put at a significantly greater credit risk in comparison to the situation immediately prior to the entrustment.

Law stated - 16 December 2025

UPDATE AND TRENDS

Key developments of the past year

35 Are there any rules governing securitisations pending in your jurisdiction or reforms under way, such as prohibitions on financial firms betting against the securities they package, improved disclosure and oversight of the asset-backed securities market, rules limiting bank compensation structures that incentivise risk, etc?

The most significant development in the securitisation legal framework over the past year has been the expansion of the real estate investment trust (REIT) issuance structure. In addition to the trust structure under the Real Estate Securitisation Act, the Taiwan regulatory authorities also plan to allow REITs to adopt a fund structure. This means that in the future, securities investment trust enterprises will be permitted to issue REIT

funds, with the hope of revitalising the REIT market through this arrangement. The relevant amendments (incorporating the relevant mechanisms through amendments to the Securities Investment Trust and Consulting Act) are currently being reviewed by the Taiwan Legislative Yuan.

Law stated - 16 December 2025

36 What legislation or government or industry initiatives are in place or contemplated to address the termination of LIBOR and transition to a substitute rate?

To date, there has been no such situation.

Law stated - 16 December 2025

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UPDATE AND TRENDS

Key developments of the past year

GENERAL FRAMEWORK

Legislation

1 | What legislation governs securitisation in your jurisdiction? Has your jurisdiction enacted a specific securitisation law?

This chapter covers English law (the laws of England and Wales). It does not cover the laws of other jurisdictions of the UK (eg, Scotland or Northern Ireland).

Securitisation in the UK is governed by (1) the Securitisation Regulations 2024, (2) the securitisation sourcebook of the handbook of rules and guidance adopted by the Financial Conduct Authority (SECN), (3) the Securitisation Part of the rulebook of published policy of the Prudential Regulation Authority of the Bank of England (PRASR) and (4) relevant provisions of the Financial Services and Markets Act 2000 (together, the UK Securitisation Regulation). The UK Securitisation Regulation is substantively similar to the EU Securitisation Regulation.

Law stated - 15 December 2025

Applicable transactions

2 | Does your jurisdiction define which types of transactions constitute securitisations?

The UK Securitisation Regulation defines a 'securitisation' as any transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is 'tranched' and has all of the following characteristics:

- payments are dependent upon the performance of the exposures;
- the subordination of tranches determines the distribution of losses; and
- such transaction or scheme does not create exposures to 'specialised lending' (eg, project finance, real estate and commodities).

The UK Securitisation Regulation also includes simple, transparent and standardised (STS) securitisations that must satisfy certain requirements. STS securitisations provide better capital treatment for UK bank investors compared to non-STS securitisations.

Law stated - 15 December 2025

Market climate

3 | How large is the market for securitisations in your jurisdiction?

The UK market is about 20–30 per cent of the total European market (total European issuance was approximately €244.9 billion in 2024). Out of this, approximately half is retained by the relevant originator or sponsor of such issuer.

The UK private market in 2024, which includes synthetic securitisation (a commonly used technique for banks looking to transfer credit risk to assets) and securitised lending, is thought to be at least the same amount as the traditional market, and most likely more. However, given the private nature of this market, it is not possible to exactly quantify this.

Law stated - 15 December 2025

REGULATION

Regulatory authorities

4 | Which body has responsibility for the regulation of securitisation?

Supervisory responsibility for the UK Securitisation Regulation is currently shared between the Financial Conduct Authority (FCA) and the Prudential Regulatory Authority (PRA). His Majesty's Treasury has also indicated that it plans to make a number of legislative reforms in the future to the UK Securitisation Regulation.

Law stated - 15 December 2025

Licensing and authorisation requirements

5 | Must originators, servicers or issuers be licensed?

There is no specific requirement to be licensed to carry out a securitisation.

However, origination, debt origination, collecting or administration of many types of consumer receivables (eg, credit cards, consumer loans and residential mortgages) is a regulated activity. Therefore, originators and servicers of such consumer receivables would need to be authorised by the FCA.

The activity of simply holding, buying and selling consumer receivables is not typically a regulated activity and therefore, provided an issuer appoints a regulated servicer to carry out the servicing of such receivables, the issuer itself would not need to be regulated.

Non-consumer receivables are typically unregulated.

Law stated - 15 December 2025

6 | What will the regulator consider before granting, refusing or withdrawing authorisation?

The regulator will consider: (1) whether offices are located within the UK; (2) whether applicant can be supervised effectively by the FCA; and (3) whether the applicant has the right people, resources and controls and governance systems.

Law stated - 15 December 2025

Sanctions

7 | What sanctions can the regulator impose?

The FCA and the PRA have the following enforcement powers under the UK Securitisation Regulation: (1) prohibiting firms and individuals from carrying on activities; (2) issuing fines against firms and individuals; (3) public censure; and (4) withdrawing authorisation.

Law stated - 15 December 2025

Public disclosure requirements

8 | What are the public disclosure requirements for issuance of a securitisation?

There are no specific public disclosure requirements under the UK Securitisation Regulation.

However, if a UK prospectus is required for such securitisation (a public securitisation) (eg, because there are securities issued that are listed on the London Stock Exchange (LSE)) or if the securities are listed on the main market of an EU exchange, then other UK regulatory requirements mean that information will typically need to be made available to the public. However, this will not be a concern for private securitisations such as securitised loans, where the information will typically remain private.

The UK Securitisation Regulation requires that, in advance of pricing of the securitisation, drafts of all underlying documentation that is essential for the understanding of the transaction is made available to investors, the FCA and the PRA (and in final form no later than 15 days after closing of the transaction). During the life of the securitisation, such information must also be provided, upon request, to potential investors.

This information includes, but is not limited to:

- a final offering document, prospectus or transaction summary;
- the transaction documents (excluding legal opinions); and
- in the case of STS, the relevant STS notification delivered to the FCA.

In addition, if the securitisation involves securities listed on the LSE, then there will be additional detailed disclosure requirements under the UK prospectus regulation and the LSE listing rules.

Law stated - 15 December 2025

9 | What are the ongoing public disclosure requirements following a securitisation issuance?

On an ongoing basis: (1) quarterly reporting (using for public securitisations or securitisations with UK sell side parties certain prescribed templates (depending on the

asset)), which includes aggregate reporting as well as detailed asset-by-asset reporting; and (2) any inside information that would need to be made public under the UK's market abuse regulation or, for private securitisations not subject to such market abuse regulation, details of any significant event (eg, a material breach of the transaction documents, a material amendment or a material change to the performance of the securitisation).

For public securitisations, the relevant information must be disclosed through a registered securitisation repository.

If applicable, the UK prospectus regulation and the LSE listing rules also have detailed ongoing disclosure requirements, as does the UK's market abuse regulation, which requires an issuer of securities admitted to trading on UK or EU trading venues to inform the public as soon as possible of any inside information (information such that, if it were to be made public, would likely have a significant effect on the price of the relevant securities).

Law stated - 15 December 2025

ELIGIBILITY

Originators

10 | Outside licensing considerations, are there any restrictions on which entities can be originators?

There are no restrictions. However, to act as an 'originator' as defined in the UK Securitisation Regulation, the entity must not have been established for the sole purpose of securitising exposures.

Law stated - 15 December 2025

Receivables

11 | What types of receivables or other assets can be securitised?

Nearly any type of receivable can be securitised. Commonly securitised receivables include residential mortgages, commercial mortgages, corporate loans, consumer loans, auto loans and leases (including dealer floorplan), credit cards, mobile phone contracts, student loans and trade invoices.

More esoteric examples include fintec (eg, peer-to-peer loans, marketplace lending platforms and crypto) and renewables (eg, wind and solar).

However, a securitisation of a securitisation exposure (a resecuritisation) is expressly prohibited (with limited exceptions).

Law stated - 15 December 2025

Investors

12 Are there any limitations on the classes of investors that can participate in an offering in a securitisation transaction?

Any 'institutional investor' (eg, a UK bank, a UK alternative investment fund, a UK insurer or pension fund) must, before purchasing a securitisation exposure, comply with detailed due diligence requirements under the UK Securitisation Regulation.

Securitisations are not typically sold to retail investors. The UK Securitisation Regulation prohibits the sale of a securitisation position to retail investors unless certain conditions are met. In addition, any UK 'manufacturer' of any financial instrument (which includes securitisations) must identify the potential target market, which for securitisations will typically exclude retail investors due to their complexity.

Law stated - 15 December 2025

Custodians/servicers

13 Who may act as custodian, account bank and portfolio administrator or servicer for the securitised assets and the securities?

Custodians and account banks must be authorised (accepting deposits and safeguarding and administering investments are regulated activities). However, portfolio administrators and servicers only need to be authorised in relation to certain types of regulated consumer assets (eg, residential mortgages or consumer loans)).

Law stated - 15 December 2025

Public-sector involvement

14 Are there any special considerations for securitisations involving receivables with a public-sector element?

The UK Securitisation Regulation provides that public sector entities (along with local authorities and regional governments) are exempt from the risk retention requirements.

Law stated - 15 December 2025

TRANSACTIONAL ISSUES

SPV forms

15 Which forms can special purpose vehicles take in a securitisation transaction?

In the UK, SPVs can take the form of private limited companies, public limited companies, a limited partnership or a trust. Private and public limited companies are the most common.

An SPV can either be directly owned by an originator or can be an 'orphan' (ie, completely removed from the control and corporate group of the originator) with its shares held on trust for charitable purposes.

Law stated - 15 December 2025

SPV formation process

16 | What is involved in forming the different types of SPVs in your jurisdiction?

SPVs are usually companies incorporated under the Companies Act 2006, which requires an application form to be submitted to Companies House alongside the company's memorandum of association and articles of association. A standard application usually takes 24 hours to process, but same-day incorporation is available.

A public limited company must have at least two company directors, a company secretary and a minimum of £50,000 shares issued that are 25 per cent (£12,500) fully paid up.

A private company has no requirement for a company secretary or minimum paid-up shares (above a nominal amount) and requires only one director.

Law stated - 15 December 2025

Governing law

17 | Is it possible to stipulate which jurisdiction's law applies to the assignment of receivables to the SPV?

Yes. The UK has incorporated Rome I, which sets out the principle that the governing law chosen by the parties to a contract will be the choice of law governing that contract, and this would apply to the assignment of receivables to the SPV.

However, if the receivables are subject to English law, then English law requirements are still relevant.

Law stated - 15 December 2025

Asset acquisition and transfer

18 | May an SPV acquire new assets or transfer its assets after issuance of its securities? Under what conditions?

Yes. English law does not impose restrictions or conditions.

Law stated - 15 December 2025

Registration

19 | What are the registration requirements for a securitisation?

There are no registration requirements.

However, a UK originator, sponsor or SPV must:

- report public securitisations to a UK securitisation repository (registered and supervised by the FCA); and
- in relation to private securitisations, send to the FCA/PRA (as applicable) a prescribed form of notification (1) before the pricing of such securitisation; and (2) if any significant event occurs during the life of the securitisation.

Law stated - 15 December 2025

Obligor notification

20 | Must obligors be informed of the securitisation? How is notification effected?

If the receivables are obligations of obligors in England and Wales, or are governed by English law, then any legal assignment of the receivables requires the obligor to be notified in writing of such assignment; otherwise, the assignment will take effect in equity.

An assignment in equity means, among other things, that:

- the obligor can continue to validly discharge its debt by making payments to the seller (instead of to the purchaser);
- the purchaser cannot bring an action in its own name against the obligor;
- the obligor may set off claims against amounts owed to it by the seller; and
- the seller may amend the receivables contract without the purchaser's consent.

In an equitable assignment, the asset sale agreement between the seller and the purchaser will typically include provisions to mitigate the impact of the above.

Notification is effected by the obligor's receipt of written notice informing them of the assignment of the relevant asset. Following such notification, the assignment will then be a legal assignment.

Law stated - 15 December 2025

21 | What confidentiality and data protection measures are required to protect obligors in a securitisation? Is waiver of confidentiality possible?

Where an obligor is an individual and their personal data is transmitted as a part of the securitisation, the securitisation will need to comply with the provisions of the UK's data

protection regulations. However, provided the data is sufficiently anonymised, it should not be caught by this requirement.

Confidentiality provisions in favour of the obligor may also be contained in the contracts governing the underlying receivables, which would require the obligor's consent to waive.

Law stated - 15 December 2025

Credit rating agencies

22 Are there any rules regulating the relationship between credit rating agencies and issuers? What factors do ratings agencies focus on when rating securitised issuances?

Regulation (EC) No. 1060/2009 as amended by the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 requires any issuer soliciting ratings for a securitisation to engage two UK-registered credit rating agencies. It also requires the issuer to consider appointing at least one with a market share of less than 10 per cent, and if it does not, to document its decision not to.

Each agency will adopt its own methodology around rating securitisations and will have different approaches for different receivables being securitised and look at a range of factors, including the assets, liabilities, structure and operation risk.

Law stated - 15 December 2025

Directors' and officers' duties

23 What are the chief duties of directors and officers of SPVs? Must they be independent of the originator and owner of the SPV?

Directors of SPVs must adhere to the general directors' duties set out in the Companies Act 2006, including the duty to act in good faith and a duty to act in accordance with the memorandum of incorporation and articles of association.

For an orphan SPV, the directors are expected to be independent from the originator. There are corporate administration businesses that provide independent directors for this purpose.

Law stated - 15 December 2025

Risk exposure

24 Are there regulations requiring originators and arrangers to retain some exposure to risk in a securitisation?

Yes. SECN 5 and article 6 of Chapter 2 of the PRASR requires the originator, sponsor or original lender to retain a material net economic interest in the securitisation of not less than 5 per cent on an ongoing basis.

This interest can be retained: (1) vertically by retaining 5 per cent of each tranche; (2) through revolving exposures by retaining 5 per cent of each exposure; (3) retaining a randomly selected sample of exposures that equals 5 per cent of the total exposure pool; or (4) horizontally by retaining 5 per cent of the first loss (either by holding the most subordinated tranche(s) or by retaining the first loss of each asset).

Law stated - 15 December 2025

SECURITY

Types

25 What types of collateral/security are typically granted to investors in a securitisation in your jurisdiction?

Typically, a security interest (in the form of a fixed charge, a floating charge and a security assignment) will be granted over all the issuer's assets (eg, the transferred receivables, bank accounts or collection accounts and any hedging) and all its rights under the securitisation transaction documents (including any receivables purchase agreement).

Law stated - 15 December 2025

Perfection

26 How is the interest of investors in a securitisation in the underlying security perfected in your jurisdiction?

Where the issuer is an English company, any security interest its gives must be registered at the Companies House of England and Wales within 21 days of creation of the security, otherwise it will be void against any third party.

In relation to a security interest over any bank accounts, the account bank would typically also be notified of the security interest and be required to provide an acknowledgement of the security and that, following an event of default under the securitisation, the investors control such cash.

In relation to an assignment of contractual rights, notice of the assignment must be given.

In relation to any declaration of trust, no additional perfection requirements are required.

Law stated - 15 December 2025

Enforcement

27 How do investors enforce their security interest?

The security is usually granted to a security trustee who will hold the security for the benefit of the various investors.

In relation to the security interest over any bank accounts, the investors would direct the account bank to block or transfer any cash, for example, to repay to the investors.

In relation to the security interest over the transferred receivables and any other assets, the security trustee is usually entitled to appoint an insolvency practitioner (without the need to apply to court) to sell or make recoveries under such assets.

In relation to a declaration of trust over a bank account, the investors would direct the trustee (ie, the issuer, who will be the account holder) to transfer the relevant monies (eg, to repay to the investors).

Law stated - 15 December 2025

Commingling risk

28 | Is commingling risk relating to collections an issue in your jurisdiction?

Commingling is a potential issue with collection accounts that include cash receipts from receivables owned by third parties that do not form part of the securitised pool. The issuer may enter into a declaration of trust in favour of the investors over those cash receipts in the collection account that relate to the receivables in the securitised pool. In addition, the issuer may require regular cash sweeps from such collection accounts to mitigate any enforcement risk against commingled assets.

Commingling is also an issue with securities held in custody where the custodian or sub-custodian has not opened a fully segregated account for the securitisation.

Law stated - 15 December 2025

TAXATION

Originators

29 | What are the primary tax considerations for originators in your jurisdiction?

The tax treatment for the originator will depend upon the type of securitisation transaction undertaken. In the case of a true sale securitisation the type of assets that are the subject of the transaction will also be key. In contrast, the taxation treatment of a sale of loan assets is likely to be governed by the loan relationship rules, which in turn will depend upon the accounting treatment that the originator accords to the transaction or applies to its accounts. The accounting treatment might be especially relevant where the consideration applicable to the transaction involves deferred consideration or acquisition of notes in the issuer in terms of when such consideration is recognised.

Law stated - 15 December 2025

Issuers

30 What are the primary tax considerations for issuers in your jurisdiction? What structures are used to avoid entity-level taxation of issuers?

Due to the tax benefits of qualifying within the special UK tax regime for securitisation companies under the Taxation of Securitisation Companies Regulations 2006, most securitisation SPVs are structured to fall within the rules. This should then enable the SPV to only be liable to UK corporation tax on a small margin retained in the company after all other payments have been made to investors (and after expenses).

Law stated - 15 December 2025

Investors

31 What are the primary tax considerations for investors?

Payments of interest on the notes issued by the Issuer SPV can usually be made free of UK withholding tax as such notes can usually benefit from the exemption from withholding tax conferred by the quoted eurobond exemption (eg, if notes are listed and traded on a recognised stock exchange). Alternatively, a double tax treaty with the UK may be available.

There is generally no liability to stamp duty or SDLT in relation to the transfer of notes.

Law stated - 15 December 2025

BANKRUPTCY

Bankruptcy remoteness

32 How are SPVs made bankruptcy-remote?

The main ways are:

- ensuring a true sale; ensuring that the sale cannot be unwound on the seller's subsequent insolvency (eg, by virtue of it being a transaction at an undervalue);
- setting up the SPV as a new incorporated entity or an orphan vehicle;
- having the SPV's creditors agree that their recourse against the SPV is limited to its assets and to agree not to petition the SPV into insolvency; and
- contractually limiting liabilities that the SPV can incur.

Law stated - 15 December 2025

True sale

33 What factors would a court in your jurisdiction consider in making a determination of true sale of the underlying assets to the SPV (eg, absence of recourse for credit losses, arm's length)?

The risk under English law is that the sale of the underlying receivables to the SPV is instead characterised as the creation of a security interest (rather than a sale), which security interest is then void for non-registration at Companies House.

A transaction structured as a sale will be upheld as such by the English courts unless it is (1) a sham or (2) the rights and obligations in the transaction are inconsistent with the transaction being one of a sale.

In relation to (2), the court will look at the provisions of the transaction as a whole to reach a determination.

Law stated - 15 December 2025

Consolidation of assets and liabilities

34 What are the factors that a bankruptcy court would consider in deciding to consolidate the assets and liabilities of the originator and the SPV in your jurisdiction?

With the exception of fraud or illegality or where an agency or nominee relationship is found to exist, a court will not consolidate the assets and liabilities of two separate legal entities.

Law stated - 15 December 2025

UPDATE AND TRENDS

Key developments of the past year

35 Are there any rules governing securitisations pending in your jurisdiction or reforms under way, such as prohibitions on financial firms betting against the securities they package, improved disclosure and oversight of the asset-backed securities market, rules limiting bank compensation structures that incentivise risk, etc?

The Prudential Regulatory Authority, Financial Conduct Authority and His Majesty's Treasury have all indicated an intention to publish future guidance in relation to the UK Securitisation Regulation.

Law stated - 15 December 2025

36 What legislation or government or industry initiatives are in place or contemplated to address the termination of LIBOR and transition to a substitute rate?

Publication of the London Interbank Offered Rate has now ceased.

Law stated - 15 December 2025

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Summary

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GENERAL FRAMEWORK

Legislation

1 | What legislation governs securitisation in your jurisdiction? Has your jurisdiction enacted a specific securitisation law?

Securitisation in the United States is regulated by an amalgam of federal and state laws rather than a single law or regulation that governs all securitisations. There are two primary federal laws that impact securitisation in the United States: the Securities Act of 1933 (the Securities Act) and the Securities Exchange Act of 1934 (the Exchange Act).

Other relevant laws and regulations include the Investment Company Act of 1940 (the Investment Company Act), the Bankruptcy Code and, on the state level, the Uniform Commercial Code (the UCC), as applicable in the jurisdictions relevant to a transaction, and in certain limited cases state-specific 'blue sky' laws.

Law stated - 31 December 2025

Applicable transactions

2 | Does your jurisdiction define which types of transactions constitute securitisations?

While there is no single definition for what constitutes a securitisation within the Securities Act or the Exchange Act, the Securities and Exchange Commission (SEC) provided guidance when it implemented Regulation AB in 2006 (as amended by Regulation AB II in 2014) as an addition to the disclosure and registration requirements for publicly issued asset-backed securities set forth in those acts. Subject to certain provisos, Regulation AB defines asset-backed securities as securities that are 'primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders'. In addition, the Exchange Act defines asset-backed securities as a 'fixed-income or other security collateralised by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset'.

Law stated - 31 December 2025

Market climate

3 | How large is the market for securitisations in your jurisdiction?

The United States generally has a robust securitisation market, although it has experienced lulls during times of economic uncertainty. According to the Securities Industry and Financial Markets Association, issuance of asset-backed securities in 2024 equalled US$388.1 billion and issuances of asset-backed securities in the third quarter of 2025

equalled US$121.7 billion – a year-over-year increase as compared to the third quarter of 2024 of 23.8 per cent. As at the end of the third quarter of 2025, issuances of asset-backed securities in 2025 are at a 16.8 per cent year-over-year pace and are approaching issuances in 2024 as a whole.

Law stated - 31 December 2025

REGULATION

Regulatory authorities

4 | Which body has responsibility for the regulation of securitisation?

The Securities and Exchange Commission (SEC) is the primary government agency tasked with the regulation of securitisation and is responsible for the enforcement of the Securities Act, the Exchange Act and the Investment Company Act. The SEC is an independent federal agency that has broad jurisdiction throughout the United States and is also authorised to conduct investigations on behalf of foreign securities authorities. In addition, the SEC is responsible for the promulgation and enforcement of rules and regulations under such statutes.

Law stated - 31 December 2025

Licensing and authorisation requirements

5 | Must originators, servicers or issuers be licensed?

Licensing requirements with respect to originators, servicers and issuers may be subject to state level requirements, depending on the assets being securitised. On the federal level, registration of public offerings of securities must be filed electronically on the SEC's Electronic Data Gathering and Retrieval (EDGAR) system, a platform that makes all registration statements and filings publicly available as part of the disclosure process. Private securitisations rely on exemptions from the registration requirements of the Securities Act and therefore do not require registration with the SEC.

In addition, collateral managers of collateralised loan obligations (CLOs) are generally required to be registered investment advisers (or relying advisers with respect to a registered investment adviser) under the Investment Advisers Act of 1940 (the Advisers Act), subject to certain exceptions – in particular for CLOs formed as wholly owned subsidiaries of business development companies (BDCs) where the BDC acts as manager of the CLO and the CLO functions as leverage on the BDC's owned assets.

Law stated - 31 December 2025

6 | What will the regulator consider before granting, refusing or withdrawing authorisation?

With respect to public securitisations, the SEC's Division of Corporation Finance is responsible for reviewing filings, which it does selectively. If selected, the SEC will assign a team of lawyers, accountants, examiners and supervisors to review the filing. Filings will be analysed to ensure that they follow the necessary registration and disclosure guidelines. Through guidelines established by the Sarbanes-Oxley Act of 2002, the SEC has communicated that their review of filings may involve a full cover-to-cover review, a financial statement review, or a targeted issue review.

The SEC provides comments if they deem amendments are necessary to enhance the registrant's compliance with securities laws. There is no formal protocol for those seeking reconsideration of SEC comments; all reconsideration requests may be sent to the office conducting the review. After all comments are resolved, the registrant may request the SEC declare the registration statement effective so that it can proceed with the transaction. Following this declaration, a public notice is posted on the SEC's EDGAR system announcing that the registration is effective.

Law stated - 31 December 2025

Sanctions

7 | What sanctions can the regulator impose?

The SEC can initiate two types of proceedings: administrative proceedings heard by SEC hearing officers and civil enforcement proceedings, either in federal court or before an administrative judge.

Administrative proceedings will typically take the form of cease-and-desist proceedings aimed at stopping specific violations of federal securities laws and administrative proceedings against regulated persons. In civil enforcement proceedings, the SEC will typically pursue injunctions prohibiting future violations or monetary penalties and the disgorgement of profits acquired in violation of securities law. The SEC can also seek a court order barring or suspending individuals from acting as corporate officers or directors.

The SEC may assist other government agencies with criminal proceedings, although it is barred from pursuing such proceedings itself.

Law stated - 31 December 2025

Public disclosure requirements

8 | What are the public disclosure requirements for issuance of a securitisation?

Public disclosure requirements are dictated by the Securities Act. The Securities Act requires all publicly offered securities to be registered with the SEC through the filing of appropriate forms, which must include a prospectus that will advertise the offering as well as any exhibits containing material documents or other pertinent information. The prospectus must include information regarding the business operations, management and experience of various transaction parties such as the sponsor and servicer, financial

condition to the extent material to such party's ability to perform its obligations under the transaction documents and risk factors, and information regarding the asset pool. SEC disclosure requirements focus on information that a reasonable investor would deem important, while also aiming to be enforceable in a uniform, straightforward and effective manner.

Law stated - 31 December 2025

9 What are the ongoing public disclosure requirements following a securitisation issuance?

The Exchange Act delineates the ongoing public disclosure obligations following a public issuance of asset-backed securities. With respect to such public securitisations, issuers must file annual reports, quarterly reports and current reports following the occurrence of material events on EDGAR following a securitisation. With respect to both public and private securitisations, if the transaction documents governing an issuance of asset-backed securities include repurchase requirements for breaches of representations and warranties, issuers are also required to file periodic reports disclosing whether any repurchase demands have been made and whether any such demands have been fulfilled.

Law stated - 31 December 2025

ELIGIBILITY

Originators

10 Outside licensing considerations, are there any restrictions on which entities can be originators?

There are no globally applicable legal requirements outside of licensing requirements on the type of entities that can act as originators. The Exchange Act defines an originator as 'the person who, through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security, and sells an asset directly or indirectly to a securitizer'.

Law stated - 31 December 2025

Receivables

11 What types of receivables or other assets can be securitised?

Any asset that has value derived from future cash flows can be securitised. Assets that are commonly securitised include commercial and residential mortgage loans, commercial debt obligations, automobile and equipment loans and leases, unsecured consumer loans, student loans, credit card receivables and interests in private funds.

Law stated - 31 December 2025

Investors

12 Are there any limitations on the classes of investors that can participate in an offering in a securitisation transaction?

Generally, there are no limitations on who can participate in a public offering of a securitisation. Private issuances of asset-backed securities, however, must rely on an exemption from the registration requirements. In order to qualify for one of these exemptions, private offerings are typically limited to certain classes of investors. In a typical private issuance, the issuer will rely on the exemption for private placements of securities set forth in section 4(a)(2) of the Securities Act. Securities are sold either directly to investors or to an initial purchaser who then resells the securities to investors pursuant to a resale safe harbour. Two commonly used resale safe harbours are Rule 144A and Regulation S. Rule 144A allows resales to persons that are qualified institutional buyers while Regulation S permits sales to non-US persons that acquire an interest in the securities outside of the United States, in each case subject to certain qualifications. Private issuances may also permit sales to accredited investors or institutional accredited investors, as defined in Regulation D under the Securities Act, although additional restrictions apply to the sales of securities to such investors. In each case, any securities sold pursuant to one of these exemptions will be subject to certain restrictions on resale.

Law stated - 31 December 2025

Custodians/servicers

13 Who may act as custodian, account bank and portfolio administrator or servicer for the securitised assets and the securities?

United States federal law does not address the parties that can act as custodian, account bank and portfolio administrator or servicer for most types of securitisations, although there may be state-specific requirements with respect to servicers of certain classes of assets. The Advisers Act requires registered investment advisers to maintain funds with a 'qualified custodian' as defined under the Advisers Act (which includes banks with insured deposits, registered broker-dealers, registered futures commission merchants and foreign financial institutions maintaining segregated customer accounts), and this requirement therefore applies by extension to securitisations managed by registered investment advisers, including most collateralised loan obligations. In addition, transaction documents for any securitisation typically set forth requirements such as capitalisation and credit ratings for account banks and third-party custodians or servicers, and in rated transactions, rating agencies may also provide input on such minimum standards.

Law stated - 31 December 2025

Public-sector involvement

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14 | Are there any special considerations for securitisations involving receivables with a public-sector element?

If the assets being securitised originate from a heavily regulated industry or are subject to the authority of federal regulators, there may be additional governmental or regulatory approvals or procedures applicable to the securitisation. In addition, for securitisations sponsored by government-sponsored enterprises, governmental or regulatory approval may be required.

Law stated - 31 December 2025

TRANSACTIONAL ISSUES

SPV forms

15 | Which forms can special purpose vehicles take in a securitisation transaction?

There is no set organisational form for a special purpose vehicle (SPV). In the United States, SPVs are most frequently organised under the laws of the state of Delaware as statutory trusts or limited liability companies, or as real estate mortgage investment conduits when mortgage-backed securities are issued, but special purpose vehicles may also be limited partnerships, corporations or common law trusts. With respect to securitisations where certain tax considerations incentivise issuers to be organised outside the United States (in particular, collateralised loan obligations (CLOs), SPVs are often formed in the Cayman Islands, Jersey or Bermuda. The form selected for an SPV is dependent on a variety of factors including: (1) the type of assets to be securitised; (2) the preferred tax treatment for the vehicle; (3) the originators of the assets to be securitised; and (4) the anticipated characteristics of investors in the securities that will be issued.

Law stated - 31 December 2025

SPV formation process

16 | What is involved in forming the different types of SPVs in your jurisdiction?

The required organisational documents will vary depending on the form of entity, but in general the governing documents will consist of one document filed in the state in which the SPV is formed that establishes the existence of the SPV and a second, more fulsome document that governs the internal affairs of the entity. The formation documents for an SPV will not differ from those of an entity that is not being established as an SPV although additional provisions will need to be included in the document that governs the internal affairs of the entity.

The cost of filing an organisational document will vary depending on the jurisdiction, entity type and whether expedited service is required, but typically range between US$90 and US$500.

Law stated - 31 December 2025

Governing law

17 Is it possible to stipulate which jurisdiction's law applies to the assignment of receivables to the SPV?

The purchase and sale agreement governing the assignment of receivables to the SPV will typically include a choice of law provision. US courts typically uphold choice of law provisions. US securitisations are typically documented by transaction documents governed by the laws of the state of New York. It is not, however, possible to stipulate the law that governs the perfection of a sale or a grant of security interest. This is dictated by the Uniform Commercial Code (the UCC) and laws applicable to the particular receivables (such as motor vehicle titling statutes where the receivables are related to titled vehicles). The UCC provides, in most cases, that the law of the jurisdiction in which a debtor or collateral, as applicable, is located governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral.

Law stated - 31 December 2025

Asset acquisition and transfer

18 May an SPV acquire new assets or transfer its assets after issuance of its securities? Under what conditions?

While Regulation AB defines asset-backed securities as securities serviced by collections on a discrete pool of assets, prefunding structures and revolving structures are generally permitted. With respect to public securitisations, Regulation AB provides that an offering involving prefunding must have a period of less than one year and a maximum prefunding amount of up to 25 per cent, but this limitation does not apply to private securitisations or securitisations to which Regulation AB does not apply. Outside of the limitations of Regulation AB, assets may be acquired or disposed of according to the terms of the transaction documents, including any provisions requiring security holder consent or confirmation that the ratings will not be negatively impacted. In particular, most CLOs will permit the acquisition of assets during an initial reinvestment period and the sale of assets throughout the life of the transaction, subject to satisfaction of conditions set forth in the transaction documents.

Considerations related to whether an acquisition or sale will undermine the treatment of the issuer as a separate entity or the transfer of the assets as a true sale, cause the issuer to be treated as an investment company under the Investment Company Act or undermine the tax treatment of the issuer must also be taken into account when determining the restrictions on post-closing sales or acquisitions of assets by an SPV.

Law stated - 31 December 2025

Registration

19 | What are the registration requirements for a securitisation?

Publicly offered securities are required to be registered with the Securities and Exchange Commission (SEC) through the filing of either Form SF-1 or Form SF-3. These forms specify which disclosure items are required to be included in the Prospectus to be filed with the SEC. Privately offered securities are not required to be registered.

Law stated - 31 December 2025

Obligor notification

20 | Must obligors be informed of the securitisation? How is notification effected?

Notification of obligors is not required to perfect a sale of, or security interest in, collateral under the UCC, although perfection of non-US collateral may be subject to other regulatory regimes with different requirements. Obligors with respect to the receivables are typically not provided with notice in connection with securitisations, except with respect to the servicing of a receivable where notice is required under applicable law. Depending on the type of collateral, notice may be required before certain remedies can be enforced against obligors by a transferee or secured party.

Law stated - 31 December 2025

21 | What confidentiality and data protection measures are required to protect obligors in a securitisation? Is waiver of confidentiality possible?

The SEC, under Subtitle A of Title V of the Gramm-Leach-Bliley Act, generally prohibits the disclosure of obligors' non-public personal information to non-affiliated third parties. As such, participants in securitisations generally redact personally identifying information from reports to avoid violating privacy laws.

Law stated - 31 December 2025

Credit rating agencies

22 | Are there any rules regulating the relationship between credit rating agencies and issuers? What factors do ratings agencies focus on when rating securitised issuances?

Regulation AB contains rules setting forth a number of requirements for Nationally Recognized Statistical Rating Organizations (NRSROs), including requirements related to disclosure of their credit rating performance, histories and methodologies and standards of training, experience and competence for their employees that participate in the credit rating determination decisions. Regulation AB II also requires issuers or underwriters of both public and private offerings of asset-backed securities rated by an NRSRO to furnish

a Form ABS-15G attaching any due diligence report provided by a third-party provider at least five business days prior to the first sale of securities in the related offering. Any such third-party provider must also provide a written certification on Form ABS Due Diligence-15E to any NRSRO that produces a credit rating to which the services relate.

To determine ratings on an issuance, NRSROs closely examine the issuer's ability to pay interest and principal, with every major rating agency using its own scale of ratings. Factors considered by NRSROs include the (1) isolated assets' credit characteristics; (2) creditworthiness and legal commitment of parties providing credit enhancement; (3) creditworthiness and legal commitment of parties providing liquidity support; (4) other parties involved in making and receiving payments from the issuer; (5) investors' security interests granted in the securitised assets and those assets' cash flows; and (6) transactional structure's legal integrity.

Law stated - 31 December 2025

Directors' and officers' duties

23 What are the chief duties of directors and officers of SPVs? Must they be independent of the originator and owner of the SPV?

The duties of directors and officers are governed by the organisational documents of the SPV and must consider only the interests of the SPV. While there will often be overlap between the directors and officers of an SPV and affiliated entities, including the originator or owner of the SPV, the governing documents of the SPV will typically contain limitations and requirements intended to ensure that it is operationally separate from affiliated entities. While no law requires independent directors or managers, it is standard in US securitisations to require at least one independent manager or director whose consent is required for enumerated material actions. Although not all SPVs have officers or directors, steps are nevertheless taken to ensure that there is an independent party with decision-making power for most SPV entity forms. With respect to trusts, the owner trustee is generally treated as the independent party, although it is also possible to appoint an independent trustee. Limited partnerships set up as SPVs are typically required to have a general partner that is also an SPV and has an independent director or manager.

Law stated - 31 December 2025

Risk exposure

24 Are there regulations requiring originators and arrangers to retain some exposure to risk in a securitisation?

Although exemptions apply for the securitisation of certain types of assets, including qualified residential mortgages and open-market CLOs, credit risk retention is required for most securitisations, whether private or public. Regulation RR requires a 'securitizer' (defined as the sponsor or depositor of a securitisation) to retain not less than 5 per cent of the credit risk of a securitisation. This requirement can be satisfied, by the securitiser or a

majority-owned affiliate thereof, through retention of an eligible vertical interest, an eligible horizontal residual interest or a combination thereof. An eligible horizontal cash reserve account may also be used in lieu of or in combination with an eligible horizontal residual interest. If the sponsor retains only an eligible horizontal residual interest, the amount of the interest must equal at least 5 per cent of the fair value of all ABS interests issued. Regulation RR also sets forth disclosure requirements with respect to this risk retention.

Law stated - 31 December 2025

SECURITY

Types

25 | What types of collateral/security are typically granted to investors in a securitisation in your jurisdiction?

Typically, an issuer grants secured parties a security interest in all assets of the SPV. This collateral generally includes the: (1) securitised assets; (2) rights under the underlying contracts under which the securitised assets arise; (3) issuer's bank accounts; and (4) issuer's interest in the transaction documents.

Law stated - 31 December 2025

Perfection

26 | How is the interest of investors in a securitisation in the underlying security perfected in your jurisdiction?

Perfection is governed by the Uniform Commercial Code (the UCC) as in effect in any jurisdictions relevant to the collateral. As a general rule, a security interest is perfected by filing, control or possession; and the manner in which perfection is achieved is dependent on the type of collateral. The collateral for a securitisation will often require a mix of these approaches to perfection. In addition, certain types of assets may be perfected in more than one of the three ways described above, with one method having priority over the other. In these cases, a security interest in the collateral will often be perfected in multiple ways.

Law stated - 31 December 2025

Enforcement

27 | How do investors enforce their security interest?

Specific enforcement mechanisms are typically outlined in the transaction documents for a securitisation. These will generally include, but not be limited to, all rights of a secured party under the UCC. Typically, following an event of default, at the direction of a specified percentage of the investors, the trustee, acting for the benefit of the secured parties, will

be able to accelerate any outstanding debt, take control of any of the issuer's accounts to the extent that they do not already exercise control and foreclose on any collateral.

Law stated - 31 December 2025

Commingling risk

28 | Is commingling risk relating to collections an issue in your jurisdiction?

Commingling risk related to collections is an issue both because it can reduce the likelihood that all monies owed to the issuer will be paid to the issuer and because the ease with which the issuer's assets can be distinguished from those of its affiliates is a factor taken into account when determining whether an SPV is truly bankruptcy remote. Transaction documents for a securitisation will typically address this risk either by forbidding commingling outright or by strictly limiting the amount of time that collections may remain in an account owned by any party other than the issuer. In addition, where collections are first remitted to a 'master collection account' and then transmitted to an account held by the issuer, the account where collections are commingled will typically be subject to a control agreement and intercreditor arrangements will often be put in place with respect to such account.

Law stated - 31 December 2025

TAXATION

Originators

29 | What are the primary tax considerations for originators in your jurisdiction?

Originators typically have two primary US tax considerations. First, originators prefer structures that avoid entity-level taxation (that is, US taxes imposed on the securitisation vehicle itself). Any such taxes will reduce the cashflow from the assets, negatively affecting all investors in the securitisation.

Second, originators must consider whether the transfer of assets to the issuer will result in the recognition of gain or loss for US tax purposes. Borrowing money is not a taxable event in the United States. Accordingly, if the securities issued in a securitisation are properly treated as debt for US tax purposes, the issuance of such securities will not cause the originator to recognise gain or loss for US tax purposes. If instead the securitisation results in securities representing equity being sold, the originator will have gain (and could have loss) recognition for US tax purposes.

Law stated - 31 December 2025

Issuers

30 |

What are the primary tax considerations for issuers in your jurisdiction? What structures are used to avoid entity-level taxation of issuers?

Issuers typically seek to avoid entity-level taxation. Three transparent types of entities are common in domestic securitisations. First, a trust with a single class of equity interests can avoid entity level US taxation, generally by avoiding engaging in any activity that might be considered a 'trade or business' activity. Second, a limited liability company with a single owner can have its separate existence 'disregarded' for US tax purposes. In such a case, the limited liability company itself is not subject to entity-level US tax. Third, a partnership is not subject to entity-level US tax, except in the case of certain 'publicly traded partnerships.'

Non-US vehicles can be used in certain cases to securitise US assets. Such an offshore issuer must avoid US withholding taxes on its assets and must avoid US taxation by avoiding being treated as engaged in a trade or business within the US.

In any case, issuers must also consider any potential withholding tax obligations with respect to payments they make to investors as issuers may be obligated to collect such amounts and remain liable for a failure to do so.

Finally, an issuer must also consider its obligations to prepare and file tax and information returns, even if it does not pay US taxes itself.

In addition to the foregoing considerations, additional considerations arise when the assets involved include mortgage loans. Special rules apply to 'taxable mortgage pools' (TMP), which attract entity-level US taxation. To be classified as a TMP, the securitisation vehicle must hold, as a substantial portion of its assets, mortgage loans and must issue two or more debt instruments with different maturities. Entity-level US taxation in those cases is often avoided (or at least minimised) through elections made by issuers to be treated as 'real estate mortgage investment conduits' or 'real estate investment trusts'.

Law stated - 31 December 2025

Investors

31 | What are the primary tax considerations for investors?

In addition to investors typically also wanting securitisations to avoid entity-level tax, investors focus on whether they will be treated as holding debt or equity for tax purposes. Investors generally look for an opinion of counsel regarding the tax treatment of the securities and the confidence level in such opinion.

US debtholders typically must include in income any interest or discount in accordance with their method of tax accounting. Non-US holders may avoid US taxation altogether if the debt is not held as part of a US trade or business and certain rules relating to 'portfolio interest' are satisfied. In neither case would an investor be treated as holding an interest in the underlying assets of the issuer.

If the securities are treated as equity in a transparent vehicle, then investors will be treated as holding an interest in the entity itself or in the entity's assets. This may be of particular concern for non-US investors as an equity holder will also be treated as engaged in a

trade or business in the US and thereby will be subject to US taxation with respect to its income associated with the security. Typically, non-US investors seek to avoid holding equity interests in securitisation vehicles that are engaged in a US trade or business and seek a high level of confidence that they will not be so treated.

Investors also seek comfort that the cashflow on their securities will not be subject to withholding tax, taking into account several different US withholding tax regimes.

Law stated - 31 December 2025

BANKRUPTCY

Bankruptcy remoteness

32 | How are SPVs made bankruptcy-remote?

Although it is not possible to ensure with complete certainty that an SPV will not be subject to bankruptcy proceedings, steps can be taken to reduce the risk that an SPV will become a debtor in a bankruptcy case for reasons not related to the performance of its assets. To mitigate the risk that a bankruptcy court would determine that an SPV should be subject to consolidation with one or more non-bankruptcy remote entities, structural protections are typically put in place in the governing documents of the SPV and the transaction documents to support the separate existence of the SPV. These protections typically include the following:

- the appointment of an independent manager or director whose consent is required for a broad range of material actions, including entry into voluntary insolvency proceedings;
- restrictions on the ability of the SPV to incur indebtedness other than pursuant to the transaction or engage in business activities other than in furtherance of its obligations under the transaction documents;
- separateness covenants included in the governing documents of the SPV, including restrictions on affiliate transactions and prohibitions on guaranteeing or otherwise holding itself as liable for the debts of its equity owners and affiliates thereof (or on having its own obligations guaranteed by others); and
- in some transactions, an orphan SPV (that is, an SPV that is owned by an independent trust company rather than the sponsor of the securitisation or an affiliate thereof) is used as the issuer as an added protective measure.

The parties to a securitisation will also frequently take steps to limit the circumstances under which creditors can force an SPV into an involuntary bankruptcy by requiring transaction parties other than the SPV to contractually waive their right to file an involuntary bankruptcy petition against the SPV and agree to limit their recourse to solely the SPV's assets.

Law stated - 31 December 2025

True sale

33 What factors would a court in your jurisdiction consider in making a determination of true sale of the underlying assets to the SPV (eg, absence of recourse for credit losses, arm's length)?

Factors that a bankruptcy court will consider in determining whether a transfer of assets from a seller to a purchaser constitutes a true sale include whether:

- the transaction documents indicate the parties' intent to qualify the transaction as a true sale;
- the seller maintains a right to control, redeem or repurchase the transferred assets or has provided a guarantee with respect to the performance of such assets;
- the seller has the right to receive any proceeds on the assets if the purchaser receives more than the purchase price of the assets in collections;
- the purchaser is able to administer and control collection on the assets;
- the sale was conducted on an arm's-length basis;
- the purchaser has a right to seek payment with respect to deficiencies on payments in respect of the transferred assets from the seller; and
- the purchase price can be adjusted post-sale based on the performance of the assets.

While the most important consideration for US courts is the scope of the purchaser's rights of recourse regarding the seller, no single factor or combination of factors controls. US courts instead make a determination on a case-by-case basis based on the economic substance of the transaction and the totality of the facts and circumstances.

Law stated - 31 December 2025

Consolidation of assets and liabilities

34 What are the factors that a bankruptcy court would consider in deciding to consolidate the assets and liabilities of the originator and the SPV in your jurisdiction?

Factors that a bankruptcy court will consider in determining whether to consolidate the assets and liabilities of an originator with an SPV include:

- the presence or absence of consolidated financial statements;
- the unity of interests and ownership between various corporate entities;
- the existence of a parent and intercorporate guarantees;
- the formal observance of corporate formalities when transferring assets;
- the degree of difficulty in segregating and ascertaining individual assets and liabilities; and

- the commingling of assets and business functions.

As with true sale, substantive consolidation is assessed on a case-by-case basis after considering the relevant facts of each case.

Law stated - 31 December 2025

UPDATE AND TRENDS

Key developments of the past year

35 Are there any rules governing securitisations pending in your jurisdiction or reforms under way, such as prohibitions on financial firms betting against the securities they package, improved disclosure and oversight of the asset-backed securities market, rules limiting bank compensation structures that incentivise risk, etc?

In November 2023, the SEC released final Securities Act Rule 192 (Rule 192) relating to conflicts of interest in asset-backed securities transactions. During the period of time that Rule 192's provisions apply, a securitisation participant may not directly or indirectly engage in any transaction that would involve or result in any material conflict of interest between the securitisation participant and an investor in such asset-backed securitisation, although there are exceptions that apply. Rule 192 became effective on 5 February 2024, and securitisation participants have been required to comply with respect to any asset-backed securitisation the first closing of the sale of which occurred on or after 9 June 2025. The prohibition, however, applies with respect to an asset-backed securitisation (and the related asset pool) even before that ABS is issued, so any transaction that would involve or result in any material conflict of interest entered into prior to the date of the securitisation would also violate Rule 192. On 16 May 2025, the Division of Corporation Finance issued a no action letter that has largely smoothed the implementation of Rule 192 in the ABS market by allowing financial institutions to rely on existing information barriers ('need-to-know' policies) to prevent inadvertent conflicts of interest. The no-action guidance provided a clear path to compliance, avoiding uncertainty and allowing the market to function well following the rule's implementation, with participants largely comfortable with the compliance framework.

The Corporate Transparency Act (the CTA), enacted in 2021, requires companies formed on or after 1 January 2024 by filing with a governmental authority, including corporations, limited liability companies and other similar entities, to disclose their 'beneficial owners' to the Financial Crimes Enforcement Network of the US Department of the Treasury (FinCEN). However, in March 2025, FinCEN issued an interim final rule exempting domestic entities and US persons from reporting beneficial ownership information under the CTA, largely defanging the CTA as a concern.

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36 What legislation or government or industry initiatives are in place or contemplated to address the termination of LIBOR and transition to a substitute rate?

Multiple states have adopted legislation to provide a statutory remedy for financial contracts that reference USD LIBOR. Additionally, on 15 March 2022, Congress enacted the Adjustable Interest Rate (LIBOR) Act. The LIBOR Act provides a uniform national approach for replacing US dollar LIBOR as the standard interest rate in 'tough legacy' contracts, which are contracts that do not include provisions for a replacement benchmark or whose fallback provisions would require either the use of a LIBOR-based rate or the polling of banks to obtain a representative rate. As a practical matter, outstanding securitisations with LIBOR-based interest rates were generally amended in advance of LIBOR ceasing publication in June 2023.

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