

NEW UK SECURITISATION RULES – JUST AROUND THE CORNER

The UK is in the process of replacing the onshored EU legislative regime for securitisation with its own rules as part of the broader "Smarter Regulatory Framework" or "SRF". HM Treasury have just published a draft statutory instrument that sheds light on the next steps – including the date the new regime will come into force. In this briefing we review the main points to take away from today's publication.

The [draft Securitisation \(Amendment\) Regulations 2024](#) were published on 22 April 2024 (the "**Amending SI**") and contain changes to the [existing statutory instrument](#) made on 29 January 2024 setting out the framework for the new UK securitisation rules under the SRF. While the Amending SI is largely a "clean up" instrument that fills in gaps the market was already aware of (due diligence rules for occupational pension schemes, consequential amendments to other legislation, etc.), it nonetheless tells us a lot about the direction of travel and the timing of next steps for the securitisation rules as they will be under the SRF. A few of these are set out below.

IMPORTANT TAKEAWAYS:

- The Amending SI commences the repeal of the onshored EU Securitisation Regulation on 1 November 2024. Since the government would not want there to be a legal vacuum, this tells us that **the new regime – including the new rules made by the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) that were consulted on in summer/autumn 2023 – will come into force on 1 November 2024.**
- Unusually, the Amending SI makes a few very specific provisions to FCA and PRA rules (rather than just general provisions to rules made by the FCA or PRA). This suggests they have seen final versions of those rules and, in turn, that their publication by the FCA and PRA is imminent. Given that the FCA Board next meets this Thursday 25 April (as set out in [FCA Handbook Notice 117](#)), **we would expect the final FCA and PRA rules to be published shortly thereafter – possibly as soon as this Friday 26 April.** There may be some delay (e.g., if the PRA has not yet finally signed off its rules), but we would not expect publication to be delayed much after that date.
- The Amending SI includes the substance of the securitisation due diligence rules that will be applicable to occupational pension schemes ("**OPS**") in the UK. Given that HMT, PRA and FCA have all expressed a desire that the due diligence rules applicable to OPS and those applicable to PRA and FCA firms should be aligned, **it is a good bet that the**

Key issues

- The Amending SI tells us the new SRF regime for securitisation will come into force on 1 November 2024.
- Reading between the lines, we expect final rules to be published by the FCA and PRA imminently – maybe this week.
- The Amending SI suggests that the authorities may have taken onboard key industry requests for the new framework, including the addition of transitional provisions.

substance (if not the precise form) of the PRA and FCA rules on due diligence will match.

- Readers may recall that a key industry comment on the FCA and PRA consultations last year was that rules intended to achieve the same outcomes should be articulated in the same terms in order to avoid having to check compliance on each occasion with two or three different sets of rules on the same subject. The format of the due diligence rules applicable to OPS does not match precisely either the rules consulted on by the FCA or those consulted on by the PRA. This is not a positive sign, and **suggests that the market will have to deal with at least two different sets of rules** (the version in the Amendment SI and the version adopted by the regulators) if not three (the version in the Amendment SI, the version adopted by the PRA and the version adopted by the FCA). **We remain hopeful that the FCA and PRA will at least align with one another**, since they are not constrained by parliamentary rules around drafting statutory instruments in the same way as HM Treasury are. If they do, that will be extremely helpful, since the vast majority of securitisation market participants in the UK are either FCA or PRA firms, and their rules cover both buy- and sell-side obligations.
- Readers may also recall that the versions of the securitisation rules consulted on by the FCA and PRA last year did not include any transitional provisions and that industry was very keen that they should be included in the final rules. The Amending SI includes just such provisions in relation to OPS due diligence rules. **The transitional rules included in the Amending SI preserve the application of the current due diligence rules for (broadly) all securitisations closed before 1 November 2024**, but in relation to OPS due diligence rules only. This provision will have been made with the input of the FCA and PRA, so it is a reasonable assumption (though it remains uncertain) that the FCA and PRA rules might make similar transitional arrangements, which will hopefully apply to the sell side as well.
- The due diligence rules applicable to OPS look very similar in substance to those consulted on by the FCA and PRA last year. One notable change is that **the industry comment requesting a distinction between primary market and secondary market investments has been taken on board**. The Amending SI now provides different timing for when certain information needs to be made available to prospective investors before they invest on the secondary market (it previously only made provision that was sensible for a primary market investment).
- The rules **prohibiting securitisation special purpose entities (SSPEs) in certain jurisdictions** on Financial Action Taskforce (FATF) lists have now been made. Whereas the old regime inherited from the EU just said SSPEs from those jurisdictions weren't allowed to be used (without placing a concrete obligation on anyone to ensure this was the case), **the new rules specify that originators, sponsors and investors all have obligations in this respect**. The only jurisdictions currently covered by this prohibition are North Korea, Iran and Myanmar, so this is not of major concern for the securitisation markets.

AUTHOR



Andrew Bryan
Knowledge Director

T + 44 20 7006 2829
E andrew.bryan
@cliffordchance.com

CONTACTS



Simi Arora-Lalani
Partner

T +44 20 7006 8282
E simi.arora-lalani
@cliffordchance.com



Timothy Cleary
Partner

T +44 20 7006 1149
E timothy.cleary
@cliffordchance.com



Adam Craig
Partner

T +44 20 7006 8862
E adam.craig
@cliffordchance.com



Kevin Ingram
Partner

T +44 20 7006 2416
E kevin.ingram
@cliffordchance.com



Jessica Littlewood
Partner

T +44 20 7006 2692
E jessica.littlewood
@cliffordchance.com



Emma Matebalavu
Partner

T +44 20 7006 4828
E emma.matebalavu
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2024

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Riyadh* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

C L I F F O R D
C H A N C E

NEW UK SECURITISATION RULES – ON THE
EDGE OF OUR SEATS



Simeon Radcliff
Partner

T +44 20 7006 2786
E simeon.radcliff@cliffordchance.com



William Sutton
Partner

T +44 20 7006 3400
E william.sutton@cliffordchance.com



Julia Tsybina
Partner

T +44 20 7006 4368
E julia.tsybina@cliffordchance.com



Chris Walsh
Partner

T +44 20 7006 2811
E chris.walsh@cliffordchance.com



Maggie Zhao
Partner

T +44 20 7006 2839
E maggie.zhao@cliffordchance.com