THE SECURITISATION LAW REVIEW

Editor
Michael Urschel

THE LAWREVIEWS

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PREFACE

Securitisation, broadly defined as the conversion of assets into marketable financial securities, has been used as a method of raising capital since as early as the 1970s in the United States. The use of securitisation as a form of borrowing has increased globally since that time, and bodies of law have been established in many jurisdictions to allow borrowers to access capital in this manner, while protecting potential investors. Regulatory considerations include tax structuring, bankruptcy considerations and economic-driven regulation focused specifically on securitisation.

Securitisation regulatory frameworks have developed at different rates globally and largely depend on a variety of factors, including the economic state of a given jurisdiction, the broader legal frameworks already in existence (including tax and bankruptcy law) and habits of local consumers. Although certain assets, such as mortgage loans, are frequently securitised across many jurisdictions, other asset classes can vary. For example, in the United States and many developed countries, in addition to mortgage loan securitisation, securitisation of automobile loans and consumer debt is extremely common. In Brazil, agribusiness credit securitisations are active. Economic events, such as the 2008 recession in the United States, have had a great impact on the regulatory framework, not only in the United States, but also in jurisdictions such as Japan that were affected by the recession.

The purpose of this inaugural edition of *The Securitisation Law Review* is to provide securitisation attorneys, borrowers, lenders and other market participants with insight into a sample of structural frameworks and regulatory issues surrounding the industry in a broad array of jurisdictions. This edition is not intended to be a comprehensive overview of securitisation regulation and structures in every jurisdiction, but rather to provide a frame of reference for, and a comparison of, the various structural features available and the regulatory considerations necessary in securitising assets globally. As the asset securitisation industry continues to develop and expand to new and more esoteric asset classes, such a comparison will undoubtedly be useful to those innovating in global securitisation markets.

I would like to thank the contributors for the chapters that follow. I hope that this volume will produce grounds for continued discussion in the global securitisation industry.

Michael Urschel
King & Spalding LLP
New York
November 2019

Chapter 6

NORWAY

Markus Nilssen and Harald Haugli Trosdahl[1]

I OVERVIEW

The Norwegian securitisation market has historically not been substantial compared to the market in other jurisdictions in Europe. In 2004, the now-repealed Norwegian Financial Institutions Act (the FIA Act)[2] was amended to enable financial institutions to securitise their loan portfolios by way of a 'true sale' to securitisation special purpose entities (SSPE). The amendment to the FIA Act addressed traditional securitisation, rather than synthetic securitisation, where there is no sale of assets from the financial institutions to the SSPE.

Because of the complexity of the rules and the lack of beneficial treatment of securitisations under the Norwegian capital adequacy regime, Norway never developed a substantial securitisation market and the already miniscule market for securitisation dropped to zero when the FIA Act was replaced by the Norwegian Act on Financial Undertakings and Financial Groups (the FUA Act)[3] from 1 January 2016, which did not provide for securitisation, thus making securitisation practically impossible for financial institutions in Norway.

Ordinary corporates and other non-financial institutions may securitise their loan portfolios or similar assets without regard to some of the restrictions that currently apply to financial institutions.

Following the implementation of a new framework for securitisation in the EU – consisting of the EU Securitisation Regulation,[4] the EU Securitisation Prudential Regulation amending the Capital Requirements Regulation[5] and the EU Securitisation Prudential Regulation Solvency II[6] (collectively the EU Securitisation Law), all of which are considered relevant to the European Economic Area (EEA) but are not yet implemented in the EEA

1 Markus Nilssen is a partner and Harald Haugli Trosdahl was an associate at Advokatfirmaet BAHR AS.

2 Act No. 40 of 10 June 1988 on Financing Activity and Financial Institutions (Norwegian: Finansieringsvirksomhetsloven).

3 Act No. 17 of 10 April 2015 on Financial Institutions and Financial Groups (Finansforetaksloven).

4 Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No. 1060/2009 and (EU) No. 648/2012.

5 Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms.

6 Commission Delegated Regulation (EU) 2018/1221 of 1 June 2018 amending Delegated Regulation (EU) 2015/35 as regards the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised securitisations held by insurance and reinsurance undertakings.

Agreement – the Norwegian legislature tasked the Financial Supervisory Authority of Norway (FSAN)[7] with establishing a working group (the Working Group) to assess a Norwegian implementation of expected EEA rules corresponding to the EU Securitisation Law. The Working Group was aided in its work by the Reference Group, which comprised representatives from the market. On 29 May 2019, the Working Group sent its final report (the Report)[8] to the Norwegian Ministry of Finance, which then sent the Report to relevant market participants to solicit their views on the proposals. The Ministry set a deadline of 23 September 2019 to provide comments on the proposals and nine market participants sent their comments (the Market Participants' Comments) within this deadline.

In short, the Report states that the EU Securitisation Law should be implemented by cross-reference in Norway (i.e., word for word). To the extent that certain issues are not regulated in the EU Securitisation Law, the Norwegian legislature may pass ancillary regulations in respect of those issues, provided, however, that any such Norwegian regulations are drafted to comply with the objective of the EU Securitisation Law and general EEA principles. The Report contains proposals for a limited number of such ancillary regulations.

The discussions in the remainder of this chapter are based on the assumption that the EU Securitisation Law will be implemented in Norway in accordance with the proposals set out in the Report, without amendments or variations. However, we have emphasised in our review where the Market Participants' Comments differ from the proposals set out in the Report.

II REGULATION

i Licensing requirements in Norway

Lending is a regulated activity in Norway and a licence or a passport is needed. Norwegian financial undertakings without a banking licence may grant loans based on a licence as a non-banking credit institution or as a finance company. Consequently the original lender would need a permit in Norway to grant loans.

The sale of existing loans is not a licensable activity in Norway, but the transfer of a substantial part of a financial institution's loan portfolio requires approval from the Ministry of Finance. In our opinion, which is backed by the Report,[9] the approval requirement does not apply to the transfer of loans in a securitisation context.[10] Therefore we do not believe that a sale of a loan portfolio from the original lender, originator or sponsor, as a rule of thumb, would trigger a need for an approval from the Norwegian authorities.

Pursuant to the FUA Act, the purchase of existing loans in a traditional securitisation constitutes a licensable activity and will thus subject the SSPE to licensing requirements, capital requirements and supervision unless an exemption exists. This is also the case for SSPEs that provide credit default swap protection to the originator in a synthetic securitisation. The Working Group has proposed a special provision in the FUA Act stating that securitisation SSPEs are not subject to licensing requirements as long as they do not issue bonds on a continuing basis. The SSPE must be established for the sole purpose of carrying out one or more securitisations. The EU Securitisation Regulation has opened up licensing to SSPEs

7 Finanstilsynet.

8 Report regarding the implementation of the Securitisation Regulation, dated 29 May 2019.

9 See the Report p. 34.

10 cf. also the preparatory works to the FIA Act, NOU 2001:23 p. 36.

established in a third country, (i.e., not established in the EU),[11] provided, however, that the third country is not listed as, for example, a high-risk and non-cooperative jurisdiction by the Financial Action Task Force.

The debtors under securitised loans have certain rights pursuant to the Norwegian Act on Financial Agreements (the FAA Act) provided that the original lender or originator was a financial institution.[12] The debtor's rights under the FAA Act will attach to the loan and must be respected by the SSPE that has acquired the loan. To further protect the debtors' rights under the FAA Act in cases of securitisation, the Working Group has proposed the requirement that the servicer of a securitised loan portfolio be either a bank, a non-banking credit institution or a finance company. The Working Group states in the Report that it expects that a Norwegian bank will normally be both original lender, originator and servicer, and consequently imposing such a requirement on a securitisation servicer is not onerous for originators.[13]

ii Consent requirements

As a main rule, Norwegian law allows for monetary claims (e.g., receivables) to be freely assigned to third parties without the debtor's consent, provided such consent is not required by law or contract. An exception from this rule is set out in the FAA Act, which applies to loans and other credits provided by financial institutions. FAA Section 45 states that a financial institution may not – without the debtor's explicit consent – assign a loan to a third party, unless the assignee is a financial institution or similar entity (in which case only a notification is required). This consent requirement cannot be waived by consumer borrowers (but non-consumer borrowers may do so). However, the Working Group has proposed a derogation from FAA Section 45 with respect to securitisation transactions. The proposal states that prior to assigning a loan portfolio to the SSPE, the financial institution must inform each individual debtor about the contemplated securitisation transaction and give the debtor a reasonable time limit (in any event, no shorter than three weeks) to determine whether to reject the assignment or not. If no response is given within the deadline, the debtor will be treated as having consented to its loan being assigned to the SSPE in accordance with FAA Section 45 (i.e., tacit consent).

It follows from the Market Participants' Comments that the market participants are divided into two factions regarding the suitability of a tacit consent requirement. The first faction argues that a tacit consent requirement is an appropriate measure to ensure appropriate protection of the debtors in a securitisation scenario. The other faction argues that sufficient protection of the debtor is already provided for, since, inter alia, (1) the servicer must be either a bank, a non-banking credit institution or a finance company, and (2) the debtor's rights and obligations under the securitised loan are not affected by the securitisation (see Section II.i, 'Licensing requirements in Norway').

11 Once implemented in the EEA Agreement, the EU Securitisation Regulation will also open licensing to SSPEs established in the EEA.

12 Act No. 46 of 25 June 1999 on Financial Contracts and Financial Assignments (Finansavtaleloven).

13 See the Report p. 56.

iii Simple, transparent and standardised securitisation

The EU Securitisation Law introduces a new regime for simple, transparent and standardised securitisation (STS securitisation). Subject to a legitimate designation of a securitisation as an STS securitisation pursuant to the EU Securitisation Regulation and the EU Securitisation Prudential Regulation amending the Capital Requirements Regulation, certain investors will receive capital relief for their investment in the STS securitisation, in contrast to an investment in a securitisation that does not have the STS designation.

Without going into detail, the STS designation is contingent both on the ordinary securitisation requirements being met and on special conditions related only to the STS securitisation (e.g., a sample of the underlying exposure shall be subject to external verification prior to issuance of the securities resulting from the securitisation) and there are, to some extent, different rules regarding non-ABCP securitisations compared to ABCP securitisations.

The responsibility for the assignment devolves jointly on the originator, sponsor and SSPE, but they may designate, subject to certain conditions and approval from the FSAN, a third party to attest the satisfaction of the STS criteria. This, however, will not absolve from liability the originator, sponsor and SSPE if it turns out that the assertion was incorrect.

Notification of the STS designation must be sent to the European Securities and Markets Authority (ESMA) by the originator and sponsor or, in the case of an ABCP programme, the sponsor. ESMA shall publish the STS notification on its official website and the originator and sponsor must inform the FSAN of the STS notification.

The STS designation can only be obtained when the originator, sponsor and SSPE are established in the EEA.

At the time of writing, the EU Securitisation Regulation only provides for STS designation for a traditional securitisation. However, the European Banking Authority (EBA), in close cooperation with ESMA and the European Insurance and Occupational Pensions Authority, published on 24 September 2019 a draft proposal for an STS framework for synthetic securitisation (the Draft Synthetic Securitisation STS Proposal). On 25 September, the EBA launched a two-month public consultation on the Draft Synthetic Securitisation STS Proposal. The EBA aims to publish a final report following this consultation. On the basis of the EBA's final report, the Commission will submit a report to the European Parliament and the Council, together with a legislative proposal, if appropriate.[14]

iv Risk retention

One of the contributing factors to the financial crisis in 2008 was the misalignment between the interests of the originators on one side and the investors on the other – securitisation transactions were often based on the 'originate-to-distribute' model, where the originators or lenders did not intend to keep the loan on their books for any longer than necessary. As a response to the unfortunate consequences that followed from this misalignment, regulators have set out certain remedial requirements intended to align the parties' interests, such as a condition that a minimum of 5 per cent of the net economic credit risk in the transaction is retained by the originator (risk retention).

It follows from Article 6 of the EU Securitisation Regulation that the risk retention requirement applies to the originator, sponsor or original lender. The interest is measured at the time of origination and shall be determined by the notional value for off-balance-sheet

14 See the Draft Synthetic Securitisation STS Proposal, page 5 ('Next steps').

items. It is not allowed to split the net economic interest among different types of retainers or to perform any credit-risk mitigation or hedging related to the retained risk – this would make the risk retention requirement void.

The originator may not select assets to be transferred to the SSPE with the aim of rendering losses on the assets transferred compared to similar assets held by the originator that are not being securitised. As a starting point, the assessment is based on the assets' term, or over a maximum of four years where the life of the transaction is longer than four years.

There are five different methods by which the relevant party may comply with the risk retention requirement. We believe many parties will choose one of the less complicated methods, namely risk retention either by way of a vertical slice (retention of at least 5 per cent of the nominal value of each tranche sold or transferred to investors) or a first loss exposure (retention of a first loss exposure of not less than 5 per cent of every securitised exposure in the securitisation).

There are, however, exemptions to the risk retention requirement under the EU Securitisation Regulation. For instance, an entity established or that operates for the sole purpose of securitising exposures will not be deemed an originator and consequently will be excluded from acting as the retainer of risk. Similarly, there will not be any risk retention requirement if the securities exposures are fully, unconditionally and irrevocably guaranteed by, for example, central governments or central banks.

v Reporting requirements

Pursuant to the Norwegian Act on Debt Information[15] a financial institution has to report information to an authorised debt registry institution about a customer's unsecured debt or unused credit line for which the financial institution is a creditor. The SSPE is exempt from the licensing requirements and will consequently not be deemed a financial institution. Therefore, the Working Group proposes that the servicer be subject to the reporting requirement.

The EU Securitisation Regulation lays down an extensive list of requirements regarding information to be provided to a securitisation repository, or, if such a repository has not been established, and subject to certain conditions, on a website, to make the transaction public.

It is contemplated in the Report that the originator, sponsor and SSPE shall make available to the FSAN, the holders of a securitisation position and, upon request, potential investors a quarterly investor report, or, in the case of asset-backed commercial papers, monthly investor reports; this is provided, however, that the parties were obligated to draw up a prospectus pursuant to the EU Prospectus Directive for the securitisation.[16]

The information should be made available by means of a securitisation repository. It is sufficient that one of the entities carries out the reporting duty. This is part of the transparency requirements the EU Securitisation Regulation lays down, even for securitisations that do not meet the STS criteria (see Section II.iii).

15 Act No. 47 of 16 June 2017 on Debt Information Related to Credit Assessment of Private Persons (Gjeldsinformasjonsloven).

16 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

vi Institutional investors – due diligence requirements

Institutional investors[17] are subject to strict requirements regarding due diligence and risk assessment prior to an investment; for monitoring asset performance following the investment; and compliance by the original lender, originator and sponsor (as applicable) with certain aspects of the securitisation (e.g., that the risk retention requirement has been met – see Section II.iv). The institutional investor must be able to demonstrate to the FSAN, upon request, that the investor has a comprehensive and thorough understanding of the securitisation and its management.

vii Prohibitions

As a main rule, the underlying exposures used in a securitisation shall not contain other securitised exposures (re-securitisation). The purpose of the ban on re-securitisation is to make the securitised product more transparent – hidden risk due to re-securitisation was one of the components that led to the financial crisis in 2008. A carve out is made for re-securitisation used for a legitimate purpose, such as where re-securitisation is in the interest of the investors because of the non-performance of the underlying exposures or for facilitation of the winding-up of a credit institution, an investment firm or a financial institution. The capital requirement related to a position in a re-securitised exposure is 100 per cent. Consequently, and taking historical events into account, we believe that the ban will not have any particular impact on the Norwegian market.

Originators, sponsors and original lenders must apply to the exposures being securitised the same sound and well-defined criteria for credit-granting that they apply to non-securitised exposures. The EU Securitisation Regulation also bans residential mortgage-backed securitisations that are backed by loans where the loan applicant was made aware that the information provided by the loan applicant might not be verified by the lender; this, however, is provided that the loans were made after the entry into force of the Mortgage Credit Directive.[18]

The EU Securitisation Regulation also bans the selling of securitised positions to retail clients, subject to certain carve outs.

17 i.e., credit institutions or investment firms as defined in the Capital Requirements Regulation; insurance and reinsurance undertakings as defined in Directive 2009/138/EC; an alternative investment fund manager (AIFM) as defined in Directive 2011/61/EU; an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 or an investment manager or an authorised entity appointed by an institution for occupational retirement provision pursuant to Directive (EU) 2016/2341; an undertaking for the collective investment in transferable securities (UCITS) as defined in Directive 2009/65/EC; and an internally managed UCITS, which is an investment company authorised in accordance with Directive 2009/65/EU; cf. Regulation (EU) No. 575/2013 and the EU Securitisation Regulation 2(12).

18 Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No. 1093/2010.

III SECURITY AND GUARANTEES

i Common types of security

As a prerequisite for its validity, a legal charge must be established in accordance with the terms of the Norwegian Pledge Act (the Pledge Act).[19] There are a few requirements that must be met pursuant to the Pledge Act for the charge to be valid *inter partes*. For example, a charge cannot be validly established over all the debtor's assets,[20] and it is not possible for a charger to grant security over less than its entire ownership in the relevant asset to be charged. To obtain legal perfection, additional requirements must be met (see Section III.ii).

Pursuant to the Pledge Act, the original lender is able to secure its claim in almost every type of asset that the debtor owns; for example, autos (auto mortgage, auto mortgage floating charge or auto chattel mortgage); inventory; machinery and plant (floating charges); patents; residential home or commercial property; and monetary claims (both in the account with the original lender or claims against a third person).

ii Ways to achieve legal perfection

Under Norwegian law, assignment of a non-negotiable debt claim obtains legal perfection when the debtor has been notified about the assignment, either from the assignor (the originator or sponsor) or the assignee (the SSPE).

The establishment of a floating charge mortgage (e.g., a charge over inventory, receivables or machinery and plant) normally obtains perfection by way of registration in the Norwegian Mortgaged Movable Property Register (the Property Register),[21] The same applies for fixed charges in autos, construction machines and railway rolling stock. The establishment of a mortgage in assets registered in a designated asset register gains perfection by registration in that asset register (e.g., the Norwegian Land Register for real estate and the Norwegian Civil Aircraft Register for aircraft).[22]

The assignment of a mortgage with the underlying loan will, as a general rule, obtain legal perfection by way of notification to the debtor; in other words, it will follow the perfection mechanism of an assignment of a debt claim, unless otherwise provided by contract or law. This means, for instance, that when an auto loan and a related auto chattel mortgage are collectively assigned from the originator to the SSPE by way of ownership, the assignment of both the auto loan and the auto chattel mortgage will be legally perfected once the debtor has been notified about the assignment – even though the establishment of an auto chattel mortgage obtains legal perfection through registration. Such legal perfection applies in relation to the debtor's and the originator's creditors alike.[23]

19 Act No. 2 of 8 February 1980 regarding Pledges (Panteloven). See the Pledge Act Section 1-2 Subsection 2.

20 The ban is applicable for situations where all the debtor's assets are charged under one floating charge deed (Generalpant). The secured party can, in reality, establish a charge over all the debtor's assets by means of several deeds covering separate parts of the debtor's assets.

21 Løsøreregisteret.

22 Grunnboka and Luftfartøyregisteret respectively.

23 With respect to perfection against the originator's (i.e., the assignor's) creditors, the question has not been clearly answered in Norwegian legislation or jurisprudence, but the predominant view among Norwegian legal scholars seems to be that a security right, such as a chattel mortgage, obtains legal perfection in the same way the underlying claim is perfected, when it is sold together with the claim. The rationale for this view is

Pursuant to Norwegian law, the SSPE may grant security over its assets to the extent allowed by law and contract. The security may, as a general rule, be pledged in favour of a security trustee on behalf of the investors. The SSPE may normally also assign the mortgages to a security trustee by way of security; the trustee obtains a sub-mortgage[24] over the mortgage. Section 1-10 of the Pledge Act states that security rights can be sub-mortgaged in favour of third parties unless prohibited by contract or other circumstances. It is not entirely clear under Norwegian law whether Section 1-10 in the Pledge Act constitutes a statutory basis for the creation of sub-mortgages in general, but we are of the opinion that it most likely does.

There is a fee for registering mortgages in the relevant register. For instance, registering a mortgage in the Property Register costs about 1,000 to 1,500 Norwegian kroner (depending on the means of registration) and for registration in the Land Register the fee is 525 kroner. While electronic mass registration in the Land Register is limited to a maximum fee of 5250 kroner irrespective of how many mortgages are registered, the same cannot be said for mass registration in the Property Register, where there is no maximum fee related to mass registration. Thus, a mass registration in the Property Register can be quite expensive. The Working Group, however, emphasises in the Report that the legislature should make the Land Register's maximum fee applicable to the Property Register as well.[25]

iii Capital requirement – significant risk transfer to the SSPE

A prerequisite for capital relief for the originator or sponsor (as applicable) is that the true sale of assets to the SSPE also constitutes a transfer of the substantial risks associated with the assets. Economic support provided by the originator or sponsor to the SSPE might conflict with this requirement. The Working Group differentiates between support provided upon the establishment of the securitisation (explicit support) and support provided at a later stage (implicit support), which corresponds to the terms used similarly in the Capital Requirements Regulation[26] regarding support provided in relation to securitisation.

While both explicit and implicit support may constitute a breach of the substantial risk-transfer requirement, the Working Group emphasises that the most troublesome in this regard is implicit support provided to an SSPE that is based on neither the transfer agreement nor arm's-length principles.[27]

iv Claw-back provisions

Regardless of legal perfection, public administration and bankruptcy proceedings (as applicable) will subject the transactions to scrutiny pursuant to Norwegian bankruptcy claw-back provisions. Essentially, the claw-back rules can be invoked by the insolvency administrator to rescind transactions deemed to be objectively unfair to the other creditors of the insolvent party.

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that a security right is so closely attached to the underlying claim that it does not make sense to require for the security right a different perfection act from that of the underlying claim when both are sold together. This view is also supported by the preparatory works; see, for instance, Ot.prp.nr.39 (1977–1978) pp. 27 and 102.

24 Frempant.

25 See the Report p. 61.

26 Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.

27 See the Report pp. 32–33.

IV PRIORITY OF PAYMENTS AND WATERFALLS

There is no established market practice for this in Norway as there is currently no active securitisation market.

V ISOLATION OF ASSETS AND BANKRUPTCY REMOTENESS

i The starting point of the insolvency estate's seizure of assets

Pursuant to the Norwegian Creditors Recovery Act,[28] the insolvency estate may seize only those assets that belong to the debtor. In this context, 'belong' refers to the debtor's right of ownership and not the right of title in the asset. Nevertheless the insolvency estate may also seize assets held by a debtor to the detriment of creditors who have not perfected their acquisition (see Section III.ii), where the estate is not bound by the transfer agreement (i.e., the assets fall back into the estate; see, for example, Section V.ii) and claw-back (see Section III.iv).

ii Valid contractual arrangement

A fundamental prerequisite for isolating the asset from the insolvency estate is that the transfer agreement between the original lender or originator and the SSPE is legal, valid and binding. This means, inter alia, that the insolvency estate is not bound by the agreement if it is pro forma, or if the agreement is later deemed invalid – for instance, because the agreement itself is unreasonably in favour of the debtor's contracting party (the SSPE).[29]

iii The true-sale requirement with a view to bankruptcy remoteness

On the basis of the legislative proposal explained in Section II.ii, to achieve a true sale of the monetary claims, the assignor must, pursuant to FAA Section 45, send a written notice to the debtors at least three weeks in advance of the closing date for the securitisation, notifying them that they have to object to the securitisation within a certain deadline to avoid their monetary claims being transferred to the SSPE. If the debtor does not object to the assignment, the debtor will be regarded as having consented in accordance with FAA Section 45. However, if consent is not obtained in the manner prescribed by FAA Section 45, a debtor may refuse to acknowledge the SSPE as a new creditor and may continue to make loan payments to, for example, the original lender. This could have an impact on the SSPE's rights in the event of the assignor's insolvency, as the absence of debtor consent means that the SSPE would not have a legally perfected ownership right to the relevant claim.

28 Act No. 59 of June 8 1984 regarding Creditors Recovery (Dekningsloven).

29 Act No. 4 of May 31 1918 regarding Conclusions of Agreements, the Right to Deposit an Item of Debt and Limitation of Claims (Avtaleloven) Section 36. For an agreement to be deemed unreasonably in favour of one party such that the contract is invalid, the threshold is high.

VI OUTLOOK

As stated in Section I, we believe that the Norwegian legislature will implement the EU Securitisation Law by cross-reference in Norway. Consequently, we expect that the same securitisation rules will apply in Norway as in the rest of the European Economic Area insofar as the relevant subject is regulated by the EU Securitisation Law.

The EU Securitisation Law entered into force on 1 January 2019. The deadline for the Norwegian consultation on the implementation of the EU Securitisation Law was 23 September 2019. Therefore, the Norwegian Act implementing the EU Securitisation Law is unlikely to enter into force prior to 1 January 2020 and potentially will not become Norwegian law until late 2020.

Appendix 1

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