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Securitisation 2022

Norway: Law & Practice
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Law and Practice

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1. STRUCTURALLY EMBEDDED LAWS OF GENERAL APPLICATION

1.1 Insolvency Laws

The Norwegian legislation currently in force does not explicitly provide for securitisation and, in practice, securitisation is therefore impossible for Norwegian financial institutions.

Prior to 2016, Norwegian securitisation rules existed but were viewed as inflexible and inadequate to promote an active securitisation market in Norway. However, following the implementation of Regulation (EU) 2017/2402 (the Securitisation Regulation) in the EU, the Norwegian Ministry of Finance (MoF) published a legislative proposal on 4 December 2020 to implement expected corresponding EEA rules into Norwegian law by cross-reference in Norwegian legislation. The legislative proposal was passed by the Norwegian Parliament on 23 April 2021, but has not entered into force at time of writing. It is expected that the new legislation will take effect at the same time as the Securitisation Regulation is implemented in the EEA Agreement, the timing of which is currently unknown but likely to occur during 2022. The new legislation will allow Norwegian financial institutions to securitise financial assets under the same legal framework as other financial institutions in the EU.

From the outset, the Securitisation Regulation only provided for simple, transparent and standardised (STS) designation for traditional securitisations. However, in April 2021 the EU passed Regulation (EU) 2021/557 and Regulation (EU) 2021/558 amending the Securitisation Regulation and Regulation (EU) 575/2013 (the Capital Requirements Regulation or CRR) to also provide an STS framework for synthetic securitisation transactions. On 7 September 2021, the MoF published a consultation paper on new legislation to implement these two regulations in Norway. The consultation paper was prepared by the Financial Supervisory Authority of Norway (FSAN) and follows on from the Norwegian Parliament's adoption on 23 April 2021 of the new legislation to implement the Securitisation Regulation in Norwegian law. It is expected that this legislation will enter into force simultaneously with the legislation implementing the Securitisation Regulation.

Starting Point for Seizure of Assets

Under the Norwegian Creditors Recovery Act an insolvency estate may only seize the assets that belong to the insolvent debtor. In this context, "belong to" refers to the debtor's actual right of ownership to the asset, which may be different from any registered or formal ownership right.

Legal, Valid and Binding Transfer Agreement

When an asset is transferred to a special purpose entity (SPE), the transfer agreement between the originator and the SPE must be legal, valid and binding to secure the isolation of the asset from the originator's insolvency estate and the bankruptcy remoteness of the SPE. An insolvency estate will for instance not be bound by a pro forma transfer agreement. The transfer agreement may also at a later stage be deemed invalid if, eg, it unreasonably prefers individual creditors to the detriment of other creditors, albeit the threshold for this is high under Norwegian law.

Transfer by "True Sale"

Another prerequisite for bankruptcy remoteness of SPEs in securitisations is that the underlying financial assets are transferred from the originator to the SPE by way of a "true sale". Following a "true sale" the SPE becomes the owner of the underlying assets and, subject to legal perfection, acquires the full legal title to the assets. In these circumstances the assets would be protected from the bankruptcy of the originator.

For the transfer of assets in the form of monetary claims to be considered a "true sale", the substantial risks associated with the underlying claims have to be transferred to the SPE. Most importantly, the credit risk on the debtor to the claim must be assumed by the SPE in such a way that the SPE or its creditors do not have any recourse to the originator if the debtor defaults on its payment obligations.

Another important consideration is whether the originator provides the SPE with economic support, either explicit or implicit. Economic support provided upon the establishment of the securitisation is considered explicit, while support provided at a later stage is considered implicit. Both forms of support may prevent the transfer from constituting a true transfer of the substantial risks associated with the assets and thus jeopardise its status as true sale.

In the preparatory works to its legislative proposal, which was adopted by the Norwegian Parliament on 23 April 2021, the MoF noted that implicit support which is neither based on the transfer agreement, nor arm's length terms, is particularly problematic in relation to the requirement for transfer of the substantial risks associated with the assets.

Claw-Back Provisions

There are certain overriding claw-back provisions under Norwegian insolvency law. As a general rule, these provisions will apply if the transaction is considered objectively unfair to the other creditors of the insolvent party. The rules may be invoked by the administrator of the insolvency estate.

1.2 Special-Purpose Entities (SPEs)

Norwegian corporate or similar law is not particularly well-suited to facilitate the use of Norwegian SPEs in securitisation transactions. Based on feedback received in the legislative hearing, the MoF assumed in its legislative proposal that Norwegian financial institutions will likely prefer to use SPEs registered outside of Norway in securitisation transactions, for instance SPEs registered in Ireland or Luxembourg. As a consequence, amendments to Norwegian corporate or similar law have not been proposed and adopted at this stage.

The Securitisation Regulation

The Securitisation Regulation lays down a general framework for securitisation and sets certain requirements for SPEs used in securitisation transactions. As outlined in **1.1 Insolvency Laws**, it is expected that the EEA rules corresponding to the Securitisation Regulation will be implemented under Norwegian law by cross-reference in national legislation.

Pursuant to the Securitisation Regulation, the SPE must be a corporation, trust or other entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations. The activities of the SPE should be limited to those appropriate to accomplishing the securitisation for which it has been established and its structure should allow isolating the obligations of the SPE from those of the originator.

An SPE should not be established in a third country that is listed as a high-risk and non-cooperative jurisdiction by the Financial Action Task Force (FATF), is listed in the EU list of non-cooperative jurisdictions for tax purposes, and/or it has not signed an agreement with a member state to ensure that that third country fully complies with the standards provided for the OECD Model Tax Convention on Income and on Capital, or in the OECD Model Agreement on the Exchange of Information on Tax Matters, and ensure an effective exchange of information on tax matters, including any multilateral tax agreements.

Insolvency Proceedings

Norwegian insolvency law does not recognise a concept of substantive consolidation of affiliated companies for the purpose of insolvency or bankruptcy proceedings. Rather, each legal entity is subject to its own insolvency test, and as a general rule the SPE would therefore not be impacted by the originator's insolvency under Norwegian law. As mentioned in **1.1 Insolvency Laws**, there are certain claw-back provisions under Norwegian law which could apply in the event of an originator insolvency. However, due to the "true sale" structure and the requirement on the SPE to be a separate entity and capable of holding assets and carrying on business separately from the originator, it seems unlikely that these claw-back rules would be applicable to SPEs in securitisation transactions.

1.3 Transfer of Financial Assets

There are no specific requirements to ensure a transfer of financial assets is valid and enforceable by the transferee against the transferor under Norwegian law. However, legal perfection rules must be observed to ensure protection against the transferor's creditors. In case of transfer of monetary claims, the debtor to such claims must be notified, as further described below.

Legal charges must be established pursuant to the terms of the Norwegian Pledge Act. Certain requirements must be fulfilled for the legal charge to be valid between the parties. Notably, it is not permitted to establish a "floating" charge over all the chargor's assets. Furthermore, the chargor may not grant security over less than the chargor's entire ownership in the charged asset.

Ways to Obtain Legal Perfection

Further requirements must be met to achieve legal perfection against the transferor's creditors, and there are different ways to obtain this depending on the relevant asset.

To obtain legal perfection for assignment of a non-negotiable monetary claim, the debtor has to be notified of the assignment. The debtor may be notified by either the assignee or the assignor.

To obtain legal perfection for the establishment of a floating charge mortgage, the charge must be registered in the relevant register. For instance, a floating charge over the chargor's trade receivables or machinery and plant, or a fixed charge over cars and other vehicles must be registered in the Norwegian Register of Mortgaged Movable Property. Mortgages in assets with designated registers, must be registered in the corresponding register, eg, the Norwegian Land Register for Real Property.

When a legal charge is assigned together with the underlying obligation secured by it, the general rule under Norwegian law is that the legal perfection requirements for assignment of the secured obligation apply equally to the assignment of the legal charge, unless otherwise follows from contract or law.

1.4 Construction of Bankruptcy-Remote Transactions

As outlined in **1.1 Insolvency Laws**, the securitised financial assets would as a general rule not form part of the originator's insolvency estate as they do not "belong to" the insolvent originator following a "true sale" of the assets. To ensure that the underlying assets are bankruptcy remote, it is key that the substantial risks associated with them are transferred to the SPE. Further, the overriding claw-back provisions in Norwegian insolvency legislation must be observed.

2. TAX LAWS AND ISSUES

2.1 Taxes and Tax Avoidance

The Norwegian legislation implementing the Securitisation Regulation does not address the

tax treatment of securitisation transactions. Currently, there is no active securitisation market in Norway and historically the activity in the Norwegian securitisation market has been low mainly due to an impractical framework. Thus, there is very little guidance and certainty on the tax treatment of securitisation transactions in Norway.

Value Added Tax

Financial services are generally exempt from Norwegian value added tax (VAT). The exemption includes the sale of receivables and consequently also the transfer of the underlying financial assets from the originator to the SPE.

Stamp Duty

There is no stamp duty or other documentary taxes on the transfer of financial assets. Certain fees must be paid for registering title transfers in the relevant mortgage registers and there are maximum fees for electronic mass-registration of multiple title transfers.

Income Tax

As outlined in **1.2 Special-Purpose Entity**, it is expected that Norwegian securitisations will utilise SPEs registered outside of Norway. Generally, Norwegian income tax would not apply to the non-Norwegian SPE's income which is derived from the acquired underlying financial assets.

Withholding Tax

Effective from 1 July 2021, a 15% withholding tax applies to interest payments made to related parties in low tax jurisdictions. Payments to entities genuinely established and conducting real economic activity in an EU/EEA member state are exempt from such withholding tax.

2.2 Taxes on SPEs

See **2.1 Taxes and Tax Avoidance**.

2.3 Taxes on Transfers Crossing Borders

See **2.1 Taxes and Tax Avoidance**.

2.4 Other Taxes

See **2.1 Taxes and Tax Avoidance**.

2.5 Obtaining Legal Opinions

There is no active securitisation market in Norway for the time being.

3. ACCOUNTING RULES AND ISSUES

3.1 Legal Issues with Securitisation Accounting Rules

The recently adopted legislation does not include any securitisation-specific accounting rules.

In general, the accounting analysis would be independent of the legal analysis. Consequently, a securitisation may be considered off-balance sheet from a legal perspective but on-balance sheet for accounting purposes.

With respect to the derecognition of the underlying financial assets in the originator's balance sheet, the preparatory works to the recently adopted legislation refers to the accounting for financial instruments under International Financial Reporting Standards 9 (IFRS 9).

3.2 Dealing with Legal Issues

As already noted, there is no active securitisation market in Norway for the time being. However, it is not market practice in Norway for legal opinions to also address accounting matters.

4. LAWS AND REGULATIONS SPECIFICALLY RELATING TO SECURITISATION

4.1 Specific Disclosure Laws or Regulations

The recently adopted legislation includes a requirement to inform the debtors under securitised loans of the identity of the SPE, of the servicer, and of the rights and obligations of the SPE and the servicer towards the debtor. The information must be provided no later than three weeks before the loans are sold and transferred from the originator to the SPE. The rules do not afford the debtors any right to object to the transfer or opt out of the securitisation.

Transparency Requirements

The Securitisation Regulation sets out certain transparency requirements which require the originator, sponsor and SPE of a securitisation to disclose certain information on the securitisation to the holders of a securitisation position, to the competent authorities and (upon request) to potential investors. The originator, sponsor and SPE of a securitisation shall designate among themselves one entity responsible to fulfil the information requirements (the responsible entity).

The transparency requirements shall ensure that investors have access to any information necessary to perform their due diligence pursuant to the Securitisation Regulation and enable them to price and monitor the risk of their investment properly. Such disclosure shall cover, among other things:

- the underlying exposure;
- all underlying information that is essential for the understanding of the transaction;
- a transaction summary or overview of the main features of the securitisation, if a prospectus has not been drawn up;
- in case of STS securitisation, the STS notification;
- investor reports on the credit quality and performance of underlying exposures; and
- inside information relating to the securitisation that the originator, sponsor or SPE is obliged to make public in accordance with Article 17 of Regulation (EU) 596/2014 (MAR).

When complying with the disclosure requirements, the responsible entity shall comply with national and EEA law governing the protection of confidentiality of information and the processing of personal data. Confidential information concerning the customer, original lender or debtor must be anonymised or aggregated.

The European Commission has published Commission Delegated Regulation (EU) 2020/1224, which sets out related requirements and is based on the Final Report on Technical Standards on Disclosure under the Securitisation Regulation published by the European Securities and Markets Authority (ESMA) on 22 August 2018.

4.2 General Disclosure Laws or Regulations

In addition to the legislative acts outlined in **4.1 Specific Disclosure Laws or Regulations**, Regulation (EU) 2017/1129 (the Prospectus Regulation) has been incorporated in Norwegian law and will be the main source of general disclosure obligations for public securitisation transactions undertaken by Norwegian originators.

Under the Prospectus Regulation, a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of:

- the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor;
- the rights attaching to the securities; and

- the reasons for the issuance and its impact on the issuer.

The prospectus shall also include risk factors, but only those risks which are material and specific to the issuer and its securities.

The application of the Prospectus Regulation depends on whether the offering or listing of securities in a securitisation requires a prospectus to be published. This is the case where there is a non-exempt public offering or a listing of the SPE's securities on a regulated marked.

4.3 Credit Risk Retention

The recently adopted legislation does not contain requirements on credit risk retention above and beyond what is set out in the Securitisation Regulation.

To secure a certain degree of alignment between the investors' and the originator's interests in a securitisation transaction, the Securitisation Regulation requires the originator, sponsor or original lender to comply with certain risk retention requirements. In general, a minimum of 5% of the net economic credit risk related to the securitisation must be retained.

The Securitisation Regulation includes an exhaustive list of five acceptable risk retention techniques. We expect that many parties will prefer the less complex risk retention methods, ie, first loss exposure (where the parties retain a first loss exposure of at least 5% of every securitised exposure in the securitisation) and vertical slice (where the parties retain at least 5% of the nominal value of each tranche sold or transferred to investors).

The Securitisation Regulation also sets out certain exemptions from the risk retention requirement, eg, in cases where the securities are fully, unconditionally and irrevocably guaranteed by central banks or central governments.

4.4 Periodic Reporting

Under the Norwegian Act on Debt Information, Norwegian financial institutions are required to report certain information to an authorised debt registry institution. As the SPE is exempted from the local licensing requirement, and thus not a financial institution for these purposes, the recently adopted legislation instead imposes the reporting obligation on the servicer of the securitised portfolio (usually the originator).

As outlined under **4.1 Specific Disclosure Laws or Regulations**, the transparency requirements under the Securitisation Regulation include periodic reporting obligations. Pursuant to Article 7, the responsible entity in a securitisation transaction shall make quarterly investor reports available, or, in the case of asset-backed commercial paper, monthly investor reports.

4.5 Activities of Rating Agencies

The activities of rating agencies are regulated in Regulation (EU) 1060/2009 (CRA Regulation), amended by Regulation (EU) 513/2011 (CRA 2) and Regulation (EU) 462/2013 (CRA 3). These regulations provide the regulatory framework for credit rating agencies and are incorporated by reference in Norwegian law. Among other things, credit rating agencies are required to be registered and supervised, and are required to use rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing.

Notably, Article 8c in the CRA Regulation requires the issuer in securitisation transactions to obtain a double credit rating, issued by two different credit rating agencies. Further, the issuer should consider appointing at least one credit rating agency which does not have more than 10% of the total market share.

ESMA is responsible for registration and supervision of credit rating agencies in the EU. In Norway, the FSAN is the competent authority under the CRA Regulation.

4.6 Treatment of Securitisation in Financial Entities

Norwegian credit institutions and investment firms are subject to the regulatory capital requirements under the CRR. The CRR has been amended by the so-called "banking package" consisting of Regulation (EU) 2019/876 (CRR II), Directive (EU) 2019/878 (CRD V) and Directive (EU) 2019/879 (BRRD II). A proposal for Norwegian implementation of the "banking package" was adopted on 18 June 2021 and is expected to enter into force during 2022.

Under the CRR, the originator may exclude the underlying exposures in a securitisation from the calculation of its risk-weighted exposure amounts and expected loss amounts if:

- significant credit risk associated with the securitised exposures is considered to have been transferred to third parties (significant risk transfer or SRT); or
- the originator institution applies a 1.250% risk weight to all securitisation positions it holds in the securitisation or deducts these securitisation positions from its Common Equity Tier 1 items.

If any of these requirements are met, credit institutions and investment firms will only be required to hold regulatory capital for the securitisation positions they retain in the transaction. The retained securitisation positions receive risk-weights which are calculated under the applicable approach set out in the CRR.

As competent authority under the CRR, the FSAN may decide on a case-by-case basis that significant credit risk shall not be considered to have been transferred from the originator to the SPE (the commensurate risk transfer test). However, where the originator is able to demonstrate that the reduction in capital it needs to hold after the securitisation is justified by a corresponding and true credit risk transfer from the originator to third parties, this test will be passed.

4.7 Use of Derivatives

The recently adopted legislation does not include any specific provisions relating to the use of derivatives in securitisation transactions other than what follows from the Securitisation Regulation.

Norway has implemented Regulation (EU) 648/2012 (EMIR).

4.8 Investor Protection

The key elements of investor protection are described above and consist of, eg, the asset segregation, bankruptcy remoteness, risk retention and disclosure provisions in the Securitisation Regulation as well as the disclosure requirements in the Prospectus Regulation.

Further, the Securitisation Regulation requires a minimum standard of due-diligence measures from institutional investors before investing in securitisation positions. This includes a comprehensive and thorough understanding of the securitisation position and its underlying exposures. The investor is also required to monitor the positions on an ongoing basis and implement written policies and procedures for the risk management of the securitisation position.

4.9 Banks Securitising Financial Assets

Under Norwegian law, there are no specific rules applicable to securitisations performed by banks as compared to other financial institutions. Norwegian banks will be permitted to securitise their financial assets and also invest in securitisation positions. Accordingly, any such transactions

will be subject to the same legal framework as described above, with the overriding legal framework being the Securitisation Regulation and the CRR.

4.10 SPEs or Other Entities

There are no special rules that apply to the form of SPEs accomplishing securitisations in Norway. As noted above, Norwegian corporate or similar law is not very well suited for SPEs in securitisation transactions and it is assumed that Norwegian financial institutions wishing to use securitisation would utilise SPEs registered outside of Norway, for instance in Ireland or Luxembourg.

4.11 Activities Avoided by SPEs or Other Securitisation Entities

There are no specific provisions under Norwegian law which relate to activities that should be avoided by SPEs in relation to securitisations.

Under the Securitisation Regulation, the SPE may only perform activities appropriate to accomplishing the purpose of carrying out securitisations.

4.12 Material Forms of Credit Enhancement

Currently, there is no securitisation market in Norway and thus there are no common ways to provide credit enhancement.

Explicit forms of credit enhancement are established at the inception of the securitisation and may include, eg, over-collateralisation and guarantees, while implicit forms of credit enhancement are provided after closing of the transaction and go beyond the originator's contractual obligations. Such support may include, eg, the repurchase of underlying exposures at above market price and improvement of the quality of explicit forms of credit enhancement. In the preparatory works to the recently adopted legislation, the MoF has specifically identified implicit support as a potential obstacle to achieving significant risk transfer.

4.13 Participation of Government-Sponsored Entities

There is currently no active securitisation market in Norway and thus no government-sponsored entities participate in the Norwegian securitisation market.

The new legislation does not contain any particular rules preventing securitisation to be carried out by government-sponsored entities.

4.14 Entities Investing in Securitisation

Norwegian investors are not restricted from investing in foreign securitisation positions. The impact of the new securitisation framework on the Norwegian capital market is difficult to predict. Generally, the investor base for securitisation positions in true sale securitisations are expected to consist mainly of large and institutional investors, such as financial institutions, pension funds and insurance companies. The riskier tranches of true sale securitisations and synthetic securitisations are expected to be placed with investors demanding a higher rate of return on their investment and who are willing to accept higher risk, eg, specialised funds.

5. DOCUMENTATION

5.1 Bankruptcy-Remote Transfers

As outlined in **1.1 Insolvency Laws**, under Norwegian law, bankruptcy-remote transfers require a legal, valid and binding transfer agreement between the originator and the SPE. Further, the transfer must be considered a "true sale", meaning that the substantial risk on the underlying financial assets must be transferred to the SPE.

There are no specific requirements to ensure that a transfer of financial assets is valid and enforceable. For a legal charge to be valid it must be established in accordance with the Norwegian Pledge Act. To obtain legal perfection, additional requirements must be met, see **1.3 Transfer of Financial Assets**.

As there is currently no active securitisation market in Norway and the adopted securitisation framework has still to enter into force, it is not possible to indicate the principal provisions in securitisation transactions.

5.2 Principal Warranties
See **5.1 Bankruptcy-Remote Transfers**.

5.3 Principal Perfection Provisions
See **5.1 Bankruptcy-Remote Transfers**.

5.4 Principal Covenants
See **5.1 Bankruptcy-Remote Transfers**.

5.5 Principal Servicing Provisions
See **5.1 Bankruptcy-Remote Transfers**.

5.6 Principal Defaults
See **5.1 Bankruptcy-Remote Transfers**.

5.7 Principal Indemnities
See **5.1 Bankruptcy-Remote Transfers**.

6. ROLES AND RESPONSIBILITIES OF THE PARTIES

6.1 Issuers
In a securitisation transaction, the issuer is a bankruptcy-remote SPE which acquires the underlying financial assets from the originator by way of a true sale. The issuer finances the acquisition of the financial assets with proceeds from notes issued by it to investors in the capital markets. For further details on SPEs see **1.2 Special-Purpose Entities**.

6.2 Sponsors
It is expected that the original lender, originator, servicer and sponsor typically will be the same entity, normally a bank. In these circumstances, the original lender/originator will normally remain the debtors' primary point of contact for dealings with their loan after the securitisation.

Under the Securitisation Regulation, it is required that the sponsor either be an investment fund or a credit institution.

6.3 Underwriters and Placement Agents
To fund the acquisition of the underlying portfolio in a securitisation, the SPE issues notes in the capital markets. In this process it is assisted by placement agents and underwriters, commonly referred to as arrangers and/or mangers and usually investment banks. They are responsible for structuring the securitisation transaction, marketing the notes and may also act as underwriters. If the originator itself is an investment bank, it may act on its own behalf in this role.

6.4 Servicers
The servicer manages the pool of purchased receivables or the underlying credit exposures on a day-to-day basis. To protect the rights and interests of the debtors under securitised loans, the new legislation requires the servicer of a securitised loan portfolio to be either a bank, a non-banking credit institution or a finance company, if the originator is a financial institution. The requirement ensures that the servicer is proper and fit to service and collect the securitised loans.

As a general rule, there are no restrictions on the replacement of the servicer with another entity, for example if the servicer does not comply with its contractual obligations or becomes insolvent.

The MoF noted in the preparatory works to the new legislation that the replacement should be executed in an orderly manner by, among other things, protecting the rights and interests of the debtors and providing for continued reporting under the Norwegian Act on Debt Information following a replacement.

The servicer is under an obligation to take necessary steps to protect the rights and interests of the debtors under the securitised loans and to secure that the debtors are not treated differently than if the underlying loans had been transferred to a financial institution.

To ensure a sound treatment of complaints from debtors under the securitised loans arising after the transfer of the loans to the SPE, the servicer shall represent the SPE in non-judiciary dispute resolution mechanisms organised by the state.

6.5 Investors

By subscribing for the issued notes, investors of securitisation positions fund the SPE's acquisition of the corresponding underlying financial assets. Further, the investors assume the credit risk of the securitised portfolio as investors only have recourse to the cash flows generated by the portfolio.

See **4.14 Entities Investing in Securitisation**.

6.6 Trustees

The trustee is appointed to safeguard the noteholders' rights and interests and to be their representative in dealings with the issuer. Further, the trustee monitors the conduct of other parties during the life of the transaction and the distribution of cash flows generated by the underlying pool of assets. In an enforcement scenario, the trustee will act on behalf of the noteholder community.

7. SYNTHETIC SECURITISATION

7.1 Synthetic Securitisation Regulation and Structure

Synthetic securitisation is a securitisation whereby the credit risk associated with the underlying financial assets is transferred to an SPE and/or investors without a true sale. This can be achieved either by the use of credit derivatives or financial guarantees.

Compared to traditional securitisation, synthetic securitisation is both more flexible and faster to implement, mostly due to the fact that the underlying financial assets are not transferred by way of a "true sale" transaction. Thus, the costs related to the transaction may be lower than for a traditional securitisation. In contrast to traditional securitisations, the purpose of a synthetic securitisation is almost always capital management and very rarely funding.

Synthetic securitisation will be subject to the same legal framework as traditional securitisation in Norway. Applicable laws depend on the structure of the transaction. For instance, the provision of a financial guarantee in a synthetic securitisation may trigger a local licensing requirement and the use of credit derivatives to transfer credit risk may be subject to the requirements under EMIR.

8. SPECIFIC ASSET TYPES

8.1 Common Financial Assets

There is no active securitisation market in Norway for the time being and thus there is no market practice regarding common financial assets securitised.

Previous Securitisation Framework

Currently, non-financial institutions and ordinary corporates may securitise their financial assets, but the Norwegian securitisation market is in practice non-existing.

Between 2004 and 2016 Norwegian law enabled financial institutions to securitise their loan portfolios by way of "true sale" transactions to SPEs.

Only a handful of securitisations were performed by financial institutions under this regime and the securitised assets consisted only of auto loans. Arguably, the complexity and rigidity of the previous securitisation legal framework and the strict treatment of securitisations under the Norwegian capital requirement regime prevented the local securitisation market from thriving.

Incentives to Use Securitisation

There are several types of financial assets that may be well suited for securitisation transactions in Norway. Notably, commercial mortgages are subject to strict risk-weighted capital requirements and are seldom included in cover pools for covered bonds.

While the risk-weighted capital requirements for residential mortgages in Norway are low, the strict leverage ratio requirements may incentivise the use of securitisation for more leveraged assets.

In the preparatory works to the new legislation, it is also expected that auto loans, consumer loans and some small and medium-sized business (SMB) loans will be well suited for securitisation due to their level of homogeneity.

Traditionally, the Norwegian securitisation market has been very limited. It remains to be seen whether the implementation of the Securitisation Regulation in Norway will accelerate the use of securitisations locally. Securitisation certainly seems more feasible in practice under the new framework developed by the EU than what it has been under previous local rules.

8.2 Common Structures

There is no active securitisation market in Norway for the time being and thus there are no common structures established for the securitisation of different types of financial assets.

It is not expected that the type of underlying financial assets will determine the general structure of securitisation transactions. Further, the new legal framework does not, with certain exceptions, differentiate between different types of underlying financial assets.

9. IMPACT OF COVID-19

9.1 Pandemic-Related Legal Issues

As there is currently no active securitisation market in Norway, parties have not have not been seen dealing with new or unusual legal issues caused by the pandemic.

As outlined in **1.1 Insolvency Laws**, the MoF has published a consultation paper on new legislation to implement Regulation (EU) 2021/557 and Regulation (EU) 2021/558 in Norwegian law. These regulations amend the Securitisation Regulation and the CRR to, among other things, extend the scope of the STS framework from only true sale securitisations to synthetic securitisations and remove existing regulatory obstacles to the securitisation of non-performing exposures (NPEs). In general, the purpose of these amendments was partly to fix some of the issues caused for NPE securitisations under the previous regulatory framework and thereby aid EU banks in their efforts to tackle the increasing levels of NPEs on their balance sheets caused by the COVID-19 pandemic. The pandemic has not caused material new national regulation or legislation for securitisation specifically.

BAHR is one of the best-known firms in Norway, and has been successfully advising leading Norwegian and global clients since 1966. The firm has, on multiple occasions, assisted Norwegian and foreign clients with questions regarding securitisation, and the firm assisted in the first ever securitisations under Norwegian law by a Norwegian bank and by a Norwegian bank's foreign branch. BAHR's banking and finance team, with over 30 specialists, advises banks and borrowers on many of the largest and most innovative transactions in the region. The firm assists financial institutions, including investment and retail banks, insurers, asset managers, investment funds and leasing companies, as well as borrowers, on the full range of financing transactions. This is supported by one of the region's leading financial regulatory practices.

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