The Legal 500 Country Comparative Guides

Russia: Securitisation

This country-specific Q&A provides an overview to securitisation laws and regulations that may occur in Russia.

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1. **How active is the securitisation market in your jurisdiction? What types of securitisations are typical?**

   The securitisation market is active enough considering current market realities. On average, up to 15 securitisation transactions with different types of assets are closed per year. Mortgage multi-tranche securitisation is the most typical securitisation in Russia. But recently, the market has shown interest in transactions with other types of assets (SME loans, receivables from PPP contracts and others); as a rule, such securitisations are single-tranche.

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

   After the adoption in December 2013 the Federal Law No. 379-FZ "On Amendment of Certain Legislative Acts of the Russian Federation", known in the professional community as the "Law on Securitisation", Russian law allows for securitisation of a type of assets and any monetary receivables (including future receivables).

   Thus, from the point of view of legislative regulation of the securities market, there are no restrictions on securitisation of any types of assets.

   However, the problem often lies in the field of related regulations. For example, the possibility of lease securitisation is often discussed, but tax regulations currently do not allow for a high-quality securitisation instrument with a leasing asset.

   In the Russian debt market, the most popular types of assets for securitisation are: mortgage loans, car loans, consumer loans, SME loans, PPP loans, capacity supply agreements (DPM).

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

   There is a special law regulating securitisation of mortgage loans – Federal Law, No. 152-FZ, "On Mortgage-Backed Securities", dated 11 November 2003. Since 1 July 2014, Russia has had a special legal framework for non-mortgage securitisation assets, which was introduced by adopting Federal Law, No. 379-FZ, "On introducing amendments into certain legislative acts of the Russian Federation", dated 21 December 2013.

   [Note to EU respondents: a separate section of the guide will cover the requirements of the EU Securitisation Regulation. Where relevant, please indicate in your response that the EU Securitisation Regulation applies but do not provide any detailed analysis unless there are particular national issues with its implementation (e.g. difficulty in reconciling the regulation with existing national legal concepts) or national regulatory approaches which are of interest. Where there are securitisation laws which apply solely in your jurisdiction please cover this in appropriate detail.

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

   The structure may differ depending on the features of the transaction, but in general terms, a typical securitisation transaction (regardless of the type of underlying asset) includes the following aspects:

   - establishment of a special purpose entity (SPE) – the issuer;
   - assignment agreement, according to which the originator transfers the rights to securitized assets to securitisation SPE;
   - issuance by the SPE of bonds secured by securitized assets;
   - service agent which services securitized assets;
   - additional risk retention by the originator (redemption of the minor tranche, guarantee, etc.).

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

   Central Bank of Russia is the regulatory authority responsible for regulating securitisation transactions in Russia.

6. **Are there regulatory or other limitations on the nature of entities that may participate in a securitisation (either on the sell side or the buy side)?**

   There are no strict limitations.

   In relation to securitisation of mortgage loans, only mortgage agents or credit organizations can be issue bonds.

   Due to the fact that the main investors in the Russian long-term market are pension funds, banks and management companies, the Bank of Russia sets certain requirements for the portfolio of these organizations, and ultimately these requirements set limits on investment in certain securitisation securities.

   At the same time, no license or authorization is required to participate in a securitisation.

7. **Does your jurisdiction have a concept of "simple, transparent and comparable" securitisations, following the BCBS recommendations?**

   Yes, the concept of "simple, transparent and comparable" (STC) securitisation is regulated by Provision of the Central bank of the Russian Federation of July 4, 2018 "About determination of the size of credit risk by banks according to transactions of which attraction of money by means of release of debt securities is result obligation fulfillment on each of which is provided to No. 647-P fully or partially with cash receipts from the assets transferred to providing. " ("Provision 647-P").

Provision 647-P establishes 16 eligibility requirements for STC securitisations. All advantages of Provision 647-P apply only to credit organizations.

The introduction of STC caused a mixed reaction from the Russian market. For example, according to some market representatives, the requirements of Provision 647-P are quite aggressive in in relation to information disclosure and legal documentation.

Market participants note the main problem of introducing STC rules is the impossibility of systematic assessment of conformity of securitisation transactions with STC requirements.

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

No, there aren't any regulation differences between private and public securitisations.

However, there are some differences in public securitisation transactions and club deals.

The number of public transactions has been markedly reduced in recent years due to the transition period from international rating agencies to national ratings agencies and banking regulations limiting investments in securitisation instruments.

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

There are no special rules. The general rules for registration of securities apply to securitisation transactions, provided for by the Federal Law, No. 39-FZ, "On the Securities Market", dated 22 April 1996, as well as the general rules of the Russian Civil Code governing agreements on the sale of rights or factoring agreements, which in practice is less common for securitisation purposes.

It should be noted pledge is often used in securitisation. However, a pledge of movables or receivables is not effective against third parties until it is recorded in a public registry of such pledges. Thus, it is necessary for a purchaser of secured receivables to submit a notification on the transfer of pledge or charge of movables to a notary in order for the transfer to be recorded in the registry.

Transfer of mortgages over immovables, as well as ships, aircrafts and other types of property which is treated similarly to immovables requires state registration to become effective. The transfer of a pledge over securities has to be recorded in the books of a registrar or depository that maintains custody of such securities.

10. **What are the disclosure requirements for public securitisations?**

General disclosure rules are applicable to public securitisations. All issues should comply with the requirements of the Russian legislation, the Bank of Russia and the Russian market operator – MOEX (shares trading, if applicable), Issuer's Information Policy and other requirements and legal acts.

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

Yes, there are certain regulations relating to risk retention.

Federal Law 39-FZ "On the Securities Market" governs the main provisions relating to risk retention. Bank of Russia Ordinance № 3309-U, dated 7 July 2014, "On the Forms and Methods of Accepting Risks on Bonds Pledged with Collateral of the Special Finance Vehicles and Special Project Vehicles" clarifies Federal Law 39-FZ and establishes functions performed by the credit institution (initial lender, subsequent lender, surety, guarantor, pledger), or other functions that lead to acceptance by the credit institution of risks in the framework of assignment of receivables transactions, depending on the type of assets (mortgage loans, consumer loans, SME loans, claims under leasing agreements).

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

There are no special regulatory obligations, but every investor has a right to conduct due diligence before making a transaction.

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

Due to the fact that securitisation transactions are regulated by general legislative norms, the following may apply to parties to a securitisation transaction:

- contractual liability (for example, any fines and penalties for parties to a transaction stipulated by an assignment agreement or a servicing agreement);
- civil liability (for example, liability for any violations associated with improper pledge);
- administrative liability (for example, violation of the procedure for registration of issue documents, non-compliance by banks with the standards for the acquisition of securitisation assets);
- tax liability (for example, tax evasion in factoring operations in securitisation transactions);
- and in some cases, even criminal liability (for example, if it concerns decisions on the acquisition of securitisation bonds that are obviously unfavorable for non-state pension funds).

14. **Are there regulatory or practical restrictions on the nature of securitisation SPVs?**

Russian laws explicitly provide for the establishment of special purpose entities (SPEs) for securitisation purposes:

- "mortgage agents" ("MAs") for the purposes of mortgage loans securitisation;
- "special financial organisations" ("SFOs") for non-mortgage securitisations; and
- "special organisations for project finance" ("SOPFs") for the issuance of project finance bonds.

Regulations for all types of SPEs are quite similar.

An SPE of any type shall have a separate management company and a separate accounting company which shall not be affiliated with the SPE and/or the originator. Shareholders of the SFOs and SOPFs cannot be owned by legal entities registered in states or territories where it is not required to disclose information on financial operations.

All types of SPEs are prohibited to have employees and have restrictions on their liquidation.

The above-mentioned requirements are aimed at compliance with the concept of SPE bankruptcy remoteness.

Given that the demand for securitisation notes originated in Russia lies presently in the local market, the transactions are mostly structured onshore and use a Russian SPV set up as a mortgage agent or specialised financial entity – in each case as an SPV with the capacity restricted by law and its constitutive documents. In transactions with a foreign SPV, the parties usually choose the Netherlands and Luxembourg. In these cases, local legislation should be followed.

15. **How are securitisation SPVs made bankruptcy remote?**

The following requirements contribute to bankruptcy remoteness:

– special legal capacity;

– ban on employees;

– limitation of voluntary liquidation;

– transfer of authority of the sole executive body to a management company;

– limitation of the range of persons who are entitled to file an SPE bankruptcy application;

– contractual restrictions on the bankruptcy petition of a bankruptcy creditor.

Based on Russian law, a decision on the issuance of bonds or agreement(s) between an SPE and its creditor may contain provisions on the release of such SPE from liabilities under any obligations which remain unsatisfied after enforcement of all available securities.

Provisions on limited-recourse clauses are applicable to all types of SPEs.

It should be noted, however, that the provision of limited-recourse is quite new and remains untested in courts.

Also according to Clause 2 of Article 230.1 of the Bankruptcy Law, no creditor of an SPE (except the Bondholders) will be able to claim the SPE's bankruptcy if there is necessary non-petition language in the agreements between such creditor and the SPE. The SPE is not prohibited from entering into agreements that do not contain non-petition language, though it is advisable to include such language in all significant agreements of the SPE.

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

Credit enhancement of securitisation issues is used to improve credit ratings.

There are two ways to improve the reliability of securities issued in the course of securitisation transaction: internal and external credit support.

The methods of internal credit support include security mechanisms provided by the originator or determined by the special structuring of the transaction itself. These methods include overcollateralization, senior-subordinated structures or spread or reserve accounts.

External credit support is a third-party guarantee that provides protection against losses not exceeding certain level. The most common method of external credit support is guarantee: the involvement of a third-party organization allows to perform the obligations of an SPE in the event of it default.

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

Following the best international practices in structuring securitisation transactions in Russia, originators adhere to the principle of true sale. True sale is ensured by transferring assets to SPEs.

Legislative requirements applying to contracts for the transfer of a securitisation asset must be respected, since if the transaction is structured improperly, there is a risk of recognition of the sale contract as sham transaction and requalification (for example, a loan secured by property (claims), a contract for the provision of services for the collection of receivables, an agency agreement).

In most securitisation transactions, the originator is a service agent. However, in some transactions a reserve service agent is also used as an additional mechanism of true sale: in the event of bankruptcy of the originator or other external reasons, will not be able to fully service the debt.

This approach allows to completely separate the transferred securitisation asset from the originator to the SPEs, and, therefore, minimizes the potential risks of challenging the assignment of securitisation asset.

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

Assets that were disposed of by the insolvent debtor may be returned into its insolvency estate as a result of challenging “suspect” or “preference” transactions of the debtor before a respective bankruptcy court.

Such transactions may be challenged by an insolvency administrator acting on behalf of the insolvent debtor at the administrator’s own discretion or under a decision of a general assembly or committee of creditors.

“Suspect” transactions include:

- transactions that do not envisage equal consideration from the insolvent debtor’s counter-agent; and
- transactions entered into with a purpose of harming property rights of creditors.

A “preference” transaction means a transaction that may lead to one creditor being privileged as compared to other creditors in relation to satisfaction of its claims.

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

Federal Law, No. 152-FZ, “On Personal Data”, dated 27 July 2006 (the “Data Protection Law”) restricts the use and dissemination of data about private individuals. As a general rule, in order to satisfy the requirements of the Data Protection Law a purchaser acquiring the receivables of individuals must receive consent from such individuals to process their data. It is customary to include respective consent into the set of documents signed before extension

of a particular retail loan.

A notable exception to this rule is provided by the Consumer Loan Law which explicitly allows the retail lenders to communicate the personal data of consumer lenders to the purchasers of the consumer loan receivables.

Data Protection Law does not apply to the data of legal entities.

Notably, banks are also subject to regulations on banking secrecy which may apply to the dissemination of information in the course of sale of receivables to non-banking organisations. An issue of application of these regulations to securitisation is still not fully resolved.

Also worth mentioning is that the Consumer Loan Law explicitly obliges the purchasers of consumer loan receivables to protect personal data, information covered by banking secrecy and other confidential information obtained as a result of purchase of such receivables.

20. **Is the conduct of credit rating agencies regulated?**

The activity of credit rating agencies in Russia are regulated by The Federal Law of 13 July 2015 No 222-FZ "On the Activities of Credit Rating Agencies in the Russian Federation, On the Amendment to Article 76.1 of the Federal Law 'On the Central Bank of the Russian Federation' (Bank of Russia)' and the invalidation of certain provisions of legal acts of the Russian Federation".

Rating agencies in Russia are prohibited from engaging in activities other than:

- assignment of ratings and other evaluations of organisations;
- making market forecasts;
- assessment of economic trends;
- conducting pricing analysis and other analytical activities;
- dissemination of data.

Only organisations accredited by the Bank of Russia can engage in rating activities.

The Big Three agencies were not accredited in the Russian Federation and had to withdraw the ratings of Russian organisations. Four agencies are currently accredited: ACRA; RA expert; National Rating Agency (NRA); National Credit Ratings (NCR).

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

Yes, the Russian Tax Code provides for special conditions for SPEs. Income in the form of

property, including cash, and (or) property rights received by the SPE are not taken into account when determining the tax base. Therefore Russian SPEs are carved out of income tax. The issue has not been specifically addressed in practice, but we believe that these provisions allow excluding tax consequences associated with debt relief when such debt relief occurs in connection with the SPE`s core business activities related to the issuance of notes.

As a general rule, the sale of receivables in the framework of securitisation transactions performed by the seller registered for tax purposes in Russia is subject to Russian value added tax (VAT). VAT exemptions are in place depending on the nature of the receivables, e.g. the sale of receivables arising from monetary loan agreements is VAT exempt along with the sale of securities (shares, bonds, promissory notes, etc.) and certain derivatives.

In accordance with Russian law, there is no specific accounting policy which has to be adopted by the seller or purchaser in the context of a securitisation transaction and in connection to Russian tax law.

No stamp duty or other transfer or documentary taxes are imposed on sales of receivables in the framework of securitisation transactions.

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

At a time when Russian legislation did not allow for the implementation of full-fledged securitisation transactions, initiators often entered into cross-border transactions with the sale of portfolio to a foreign SPE and attracting financing by issuing foreign secured bonds.

Assignment of claims by the Russian originator in favor of a foreign SPE is possible, and until recently, securitisation transactions were structured only with the establishment of SPE in a jurisdiction different from the jurisdiction of the initiator of the transaction.

Nevertheless, in spite of the availability of cross-border transactions, we are seeing Russian SPEs created more and more often recently, mostly due to the impacts of the sanctions regime.

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

The Russian securitisation market is not yet mature enough in order for us to be able to analyse the extent of such transition. In public transactions, fixed interest rates are often used; in club deals, it depends on the return on the transferred asset.

24. **How could the legal and regulatory framework for securitisations be improved in**

your jurisdiction?

Russian legislation is being actively improved in matters relating to securitisation and the securities market as a whole.

Nevertheless, there is always room for development, and we believe that further improvements could be as follows:

– development of PPP securitisation: the extension of rights of SOPFs ("special organisations for project finance"), for example, granting SOPF the right to participate in project financing as private partner or concessionaire, as well as allowing for the possibility of assignment of receivables from the concession agreement.

– providing greater opportunities for the development of green securitisations;

– improving the mechanisms for protecting the rights of investors (including providing investors with more opportunities to obtain information about concluded SPE transactions, particularly, with the participation of bondholders' representative).