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Legal Framework on State Management of Securitisation Activities – International Experience and Lessons for Vietnam

Dr. Nguyen Hai Yen
Hanoi Law University, Vietnam

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Corresponding Author: **Dr. Nguyen Hai Yen**

Abstract
This article provides an overview of state regulation of securitisation activities and examines the current legal framework governing such activities in Vietnam. It further analyses the legal experiences of the United States, the European Union, and Japan, with particular emphasis on mechanisms such as risk retention, disclosure requirements, control of underlying assets, and cross-sectoral supervision. Based on a comparative assessment, the article proposes several recommendations to improve the legal framework and enhance the effectiveness of state regulation of securitisation in Vietnam, thereby contributing to the mitigation of systemic risk in the development of the domestic securitisation market.

Keywords: Securitisation, State Regulation, Systemic Risk, Disclosure, Risk Retention, Vietnam, United States, European Union, Japan

1. Overview of state management of Securitisation

Securitisation is widely regarded as a modern financial technique that enables the transformation of illiquid assets such as loans, receivables, or future cash flows into securities that can be issued and traded on capital markets.[1] Through this mechanism, originators are able to mobilise medium- and long-term funding, improve their balance sheets, and distribute credit risk among a broad range of investors. At the same time, investors gain access to a diverse array of financial products, with returns structured across different risk tranches.[2]

However, due to its complex financial structure and the involvement of multiple intermediaries, securitisation entails inherent risks, including the potential concealment of risks, increased information asymmetry, deterioration in the quality of underlying

[1] Nguyễn Thị Huệ và Phạm Thị Tường Vân (2023), "Chứng khoán hoá các khoản nợ: Kinh nghiệm quốc tế và bài học cho Việt Nam", *Tạp chí Kinh tế Tài chính Việt Nam*, Số 1, tháng 2/2023, tr. 45, https://scholar.dlu.edu.vn/thuvienso/bitstream/DLU123456789/196010/1/CVv458S12023044.pdf, truy cập 01/1/2026; Nguyễn Thị Hương (2019), "Kinh nghiệm huy động nguồn lực tài chính thông qua chứng khoán hoá các tài sản bất động sản", *Tạp chí Tài chính*, Số 7/2019, tr. 36

[2] Đinh thị Quỳnh Anh và Nguyễn Ngọc Quỳnh (2023), "Chứng khoán hoá – Kinh nghiệm thế giới và bài học cho Việt Nam", *Tạp chí Công thương*, Số 10 – Tháng 4/2023, tr. 385

assets, and the propagation of contagion effects within the financial system.[3] These concerns necessitate a specialised ensure transparency, effectively control risks, and maintain the stability of the financial system.

Experience from the 2007-2008 global financial crisis demonstrates that when securitisation activities expand beyond the regulatory capacity of supervisory authorities particularly in the subprime mortgage sector risks are not confined to individual issuing institutions but may escalate into systemic risk.[4] A lack of transparency in product structures, conflicts of interest among market participants, and weak supervisory mechanisms all contributed to exacerbating the crisis.[5] Accordingly, state regulation of securitisation should be understood not merely as a matter of technical legal design, but as a crucial instrument for safeguarding macro-financial stability.[6] From a conceptual perspective, state regulation may be defined as the exercise of public authority by state agencies to establish and maintain social order, while guiding societal development in accordance with predetermined policy objectives.[7] In the financial sector, this approach is operationalised through the regulation of financial markets and instruments, including securitisation a highly technical field characterised by complex and multifaceted risks. Accordingly, state regulation of securitisation can be understood as the aggregate of activities undertaken by competent public authorities to establish and maintain the legal order governing this market.[8]

In essence, state regulation of securitisation constitutes the organised exercise of public authority, implemented through a system of legal rules and specialised regulatory bodies to govern and supervise the securitisation market. At its core, the state establishes a comprehensive legal framework that regulates the entire securitisation process from the origination of underlying assets and the establishment of special purpose vehicles (SPVs), to the issuance, trading, and settlement of securities. Through this framework, the state defines behavioural boundaries, safety standards, and legal obligations for market participants and transactions, thereby providing the legal foundation for the stable functioning of the market.[9]

In substantive terms, state regulation of securitisation extends beyond the mere enactment of legal rules to encompass their implementation, supervision, and the overall regulation of market operations. These functions must be carried out in a systematic manner to ensure not only the promotion of market development but also the effective control of emerging risks.

First, the development and refinement of the legal framework governing securitisation constitutes the foundational element of state regulation in this field. The state enacts rules that govern the entire securitisation process, from establishing standards for underlying assets and eligibility criteria for market participants to regulating issuance, trading, and settlement mechanisms. At the same time, to ensure legal certainty and the enforceability of transactions, the law must clearly address core issues such as the "true sale" mechanism, the segregation of assets from the originator's balance sheet, and the treatment of assets in the event of insolvency.

In addition, the establishment of supervisory and regulatory mechanisms is a key component of state regulation aimed at ensuring that the securitisation market operates in a transparent and efficient manner. This requires the designation of a competent lead authority responsible for

[3] Francesca Battaglia, Angela Gallo (2013), Securitization and systemic risk: An empirical investigation on Italian banks over the financial crisis", *International Review of Financial Analysis*, volume 30, pp. 274-286, https://doi.org/10.1016/j.irfa.2013.03.002, truy cập 01/1/2026; Lê Thị Loan (2019), "Chứng khoán hoá nợ xấu của các ngân hàng thương mại: Kinh nghiệm các nước và khuyến nghị cho Việt Nam", *Tạp chí Chứng khoán,* số 248 - tháng 6/2019, tr. 37; Hà Huy Phong (2026), *Một số khía cạnh pháp lý của việc chứng khoán hóa tài sản tài chính từ dự án PPP hạ tầng giao thông*, https://phapluatphattrien.vn/mot-so-khia-canh-pha-ly-cua-viec-chung-khoan-hoa-tai-san-tai-chinh-tu-du-an-ppp-ha-tang-giao-thong-d5411.html#:~:text=Vi%E1%BB%87c%20n%C3%A0y%20kh%C3%B4ng%20ch%E1%BB%89%20gi%C3%BAp,v%C3%A0o%20h%E1%BA%A1%20t%E1%BA%A7ng%20giao%20th%C3%B4ng.&text=T%E1%BA%A1i%20b%C6%B0%E1%BB%9Bc%20n%C3%A0y%2C%20doanh%20nghi%E1%BB%87p,l%E1%BA%A1i%20cho%20ch%E1%BB%A7%20C4%91%E1%BA%A7u%20t%C6%B0, truy cập 01/1/2026

[4] Financial Stability Forum (2008), *Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience*, p. 4, https://www.fsb.org/uploads/r_0804.pdf, truy cập 01/1/2026; National Commission on the Causes of the Financial and Economic Crisis in the United States (2011), *The financial crisis inquiry report*, p. 18, https://www.fsb.org/uploads/r_0804.pdf, truy cập 01/1/2026; Eric Helleiner (2011), "Understanding the 2007–2008: Global Financial Crisis: Lessons for Scholars of International Political Economy", *Annual Review of Political Science*, pp. 69

[5] Financial Stability Forum (2008), *tlđd.*, p. 8; Organisation for Economic Co-operation and Development (2008), "Financial Market Trends", OECD Journal, Volume 2008 Issue 1, p. 13, https://www.oecd.org/content/dam/oecd/en/publications/reports/2008/05/oecd-journal-financial-market-trends-volume-2008-issue-1_g1gh8959/fmt-v2008-1-en.pdf, truy cập 01/1/2026

[6] Basel Committee on Banking Supervision (2009), BIS Annual Economic Report, https://www.bis.org/publ/arpdf/ar2009e.pdf, truy cập 01/1/2026

[7] Nguyễn Hương và Nguyễn Thị Hồng Vân (2023), *Quản lý nhà nước là gì? 5 nội dung quản lý nhà nước,* https://luatvietnam.vn/linh-vuc-khac/quan-ly-nha-nuoc-la-gi-883-94555-article.html, truy cập 01/1/2026

[8] Hoàng Thị Thanh Hằng (2008), *Chứng khoán hóa các khoản vay thế chấp bất động sản góp phần tạo hàng hóa cho thị trường chứng khoán Việt Nam*, Luận văn thạc sĩ bảo vệ tại Trường Đại học Kinh tế TP Hồ Chí Minh, tr. 52, http://thuvien.due.udn.vn:8080/dspace/bitstream/TVDHKT/11372/2/LV-0266.pdf, truy cập 01/1/2026

[9] Lê Thị Lanh, Huỳnh Thị Cẩm Hà và Huỳnh Đức Trường (2014), "Chứng khoán hoá: Công cụ tài trợ cho bất động sản Việt Nam", Tạp chí Phát triển & Hội nhập số 16 (26) – tháng 05-06/2014, tr. 27, https://www.uef.edu.vn/newsimg/tap-chi-uef/2014-05-06-16/3.pdf, truy cập 01/1/2026

licensing and oversight, as well as strengthened supervision of intermediaries such as credit rating agencies, valuation firms, and other relevant service providers. To ensure effective oversight, regulatory authorities must continuously monitor market developments, assess the risk profile of transaction structures, and promptly implement appropriate intervention measures, including enforcement actions where necessary.[10] Through continuous and proactive supervision, the state can mitigate the risk of contagion across market participants and segments, thereby contributing to the stability and resilience of the financial system as a whole.

Another key aspect of state regulation of securitisation is the control of systemic risk and the safeguarding of financial stability.[11] Drawing on lessons from past financial crises, several jurisdictions including those examined in the following sections, such as the United States, the European Union, and Japan have introduced regulatory tools such as risk retention requirements for originators, compliance with capital adequacy standards, and restrictions on overly complex transaction structures. These measures help to mitigate incentives for excessive risk transfer and prevent the accumulation of risk within the financial system.[12]

In addition, ensuring transparency and adequate disclosure constitutes a central pillar of state regulation of securitisation. Regulatory frameworks typically require market participants to disclose detailed information on underlying assets, product structures, cash flows, and factors affecting repayment capacity. The standardisation of disclosure requirements not only enables investors to assess risks more accurately but also strengthens market discipline and reduces information asymmetry.[13]

In addition to regulatory and supervisory measures, the state may, in certain circumstances, also perform a developmental role in guiding and supporting the growth of the securitisation market, particularly during its early stages. Policy instruments such as tax incentives, financial support, pilot programmes, and capacity-building initiatives can contribute to market development. However, these measures must be carefully designed to avoid undermining market discipline or exacerbating systemic risk.

2. The Current Legal Framework for State Management of Securitisation in Vietnam

At present, securitisation in Vietnam has not been formally recognised as an independent financial mechanism governed by a dedicated legal framework. Instead, it exists in a fragmented manner across various areas of law, including banking, securities, civil, and corporate law. This has resulted in a regulatory landscape that lacks coherence and fails to establish a comprehensive framework capable of effectively controlling risks and promoting market development.

First, with respect to the development and refinement of the legal framework, Vietnamese law does not yet provide a specialised legal instrument governing securitisation in a comprehensive manner. Certain elements of securitisation are addressed in scattered provisions relating to securities issuance, the transfer of property rights, secured transactions, and the resolution of non-performing loans. However, key issues such as the "true sale" mechanism, off-balance-sheet treatment of assets, the legal status of special purpose vehicles (SPVs), and asset treatment in insolvency remain insufficiently defined. This creates significant legal gaps and increases the risks associated with implementing securitisation-like transactions in practice.

In addition, regarding supervisory and regulatory mechanisms, Vietnam has yet to establish a unified framework for overseeing securitisation activities. Regulatory functions are currently dispersed among multiple authorities in the financial, banking, and capital market sectors, giving rise to potential overlaps or gaps in supervision. While the Ministry of Finance is responsible for state management of finance and capital markets, the State Securities Commission supervises securities issuance and trading activities, and the State Bank of Vietnam regulates credit institutions which may act as originators of underlying assets. Although this structure reflects the cross-sectoral nature of securitisation, it lacks a central coordinating authority. As a result, supervision across the entire lifecycle of securitisation transactions from asset origination and transfer to securities issuance, cash flow management, and investor protection remains incomplete and ineffective. Moreover, given the nascent stage of market development, the current legal framework does not provide dedicated mechanisms for monitoring, risk assessment, or regulatory intervention in relation to complex structured transactions.

With respect to systemic risk control and financial safety, Vietnamese law has introduced certain risk management tools in the banking and securities sectors, including capital adequacy requirements, loan classification rules, and provisions for risk provisioning. However, specific regulatory tools tailored to securitisation such as risk retention requirements for originators, rules governing product structures, or restrictions on re-securitisation have yet to be established. This indicates that the current legal framework has not fully aligned with international standards for managing risks associated with complex financial instruments.

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[10] Trần Thị Vân Anh (2020), *Chứng khoán hóa các khoản vay: Những vấn đề cần cân nhắc,* https://tapchinganhang.gov.vn/chung-khoan-hoa-cac-khoan-vay-nhung-van-de-can-can-nhac-10265.html, truy cập 01/1/2026

[11] Financial Stability Board (2010), *Implementing OTC derivatives market reforms,* p. 8, https://www.fsb.org/uploads/r_101025.pdf, truy cập 01/1/2026; Phạm Tiến Đạt (2023), "Nghiên cứu chứng khoán hoá quốc tế - Hàm ý chính sách cho Việt Nam", *Tạp chí Nghiên cứu Tài chính – Marketing*, Số 77, tr. 12

[12] Sanjev Warna-kula-suriya and Kamal Dalal Latham & Watkins (2021), *Securitisation in the UK*, tr. 14, https://www.lw.com/en/insights/2021/02/chambers-securitisation-2021-uk, truy cập 01/1/2026;

[13] Trần Nguyễn Dạ Vi (dịch) (2015), *Chứng khoán hóa và khủng hoảng tài chính toàn cầu 2007-08,* https://nghiencuuquocte.org/2015/01/17/chung-khoan-hoa-va-khung-hoang-tai-chinh-toan-cau-2007-08/, truy cập 01/1/2026; Hoàng Lê (2021), Chứng khoán hóa với xã hội hóa đầu tư, https://laodongdoanthe.vn/chung-khoan-hoa-voi-xa-hoi-hoa-dau-tu-69103.html, truy cập 01/1/2026; Ngô Hồng Hạnh (2024), *Chứng khoán hóa: Kinh nghiệm triển khai trên thế giới và một số khuyến nghị đối với Việt Nam*, https://tapchinganhang.gov.vn/chung-khoan-hoa-kinh-nghiem-trien-khai-tren-the-gioi-va-mot-so-khuyen-nghi-doi-voi-viet-nam-10151.html, truy cập 01/1/2026; Hoàng Thị Thanh Hằng (2008), *tlđd*., tr. 81

In terms of transparency and disclosure, Vietnam has developed relatively comprehensive disclosure requirements for the securities market in general, particularly concerning issuers and public companies. However, for securitisation-like products, there are no specific requirements mandating detailed disclosure of underlying assets, cash flow structures, or risk characteristics. This gap may exacerbate information asymmetry should securitisation products be introduced in the future.

Furthermore, regarding the state's developmental and supportive role, Vietnam remains at an early stage of exploring and piloting securitisation-related models. Notable examples include the resolution of non-performing loans through the Vietnam Asset Management Company (VAMC), the issuance of asset-backed bonds, and the conversion of bank debt into equity in enterprises. Nevertheless, systemic support policies such as tax incentives, guarantee mechanisms, or dedicated pilot programmes for securitisation have not yet been fully developed.

From a sectoral perspective, the current legal framework for state regulation of activities related to securitisation can be analysed across three main areas: (i) securities and capital market regulation; (ii) banking and credit regulation; and (iii) regulation of debt trading and asset management.

(i) Securities and Capital Market Regulation

Under the Law on Securities 2019 (as amended in 2025), the Ministry of Finance is responsible for state management of the securities market. The State Securities Commission, operating under the Ministry, is tasked with organising and supervising securities issuance, trading, and market participants.

Accordingly, the State Securities Commission has authority over public offerings, listing, disclosure obligations, and the activities of securities companies, fund management companies, and credit rating agencies. In cases where securitisation-like products are issued in the form of bonds or other securities, such activities in principle fall within its supervisory scope. However, because securitisation is not legally recognised as a distinct category of securities, the regulatory framework does not fully capture the structure of such transactions, particularly with respect to underlying assets and associated cash flows.

(ii) Banking and Credit Regulation

Where underlying assets consist of loans or credit-related receivables, the State Bank of Vietnam exercises regulatory authority under the Law on Credit Institutions 2024 (as amended in 2025). The State Bank is responsible for issuing regulations on banking safety, credit risk management, and supervising the purchase and transfer of debt by credit institutions.

Subordinate regulations, such as Circular No. 18/2022/TT-NHNN, provide detailed rules on debt trading by credit institutions and foreign bank branches. However, these rules are primarily designed for non-performing loan resolution and banking risk management, rather than for facilitating the use of receivables as underlying assets in securitisation transactions. Consequently, the regulatory role of the State Bank remains limited to overseeing credit institutions, without extending to the supervision of securitisation structures or investor protection.

(iii) Regulation of Debt Trading and Asset Management

In the area of debt trading and asset management, state regulation is primarily governed by enterprise and investment law. Following the enactment of the Law on Investment 2020 and Decree No. 31/2021/ND-CP, debt trading services are no longer classified as a conditional business line. As a result, regulatory oversight is largely limited to business registration and ex post supervision, without licensing requirements or specialised regulatory control over debt trading entities acting as intermediaries in complex financial transactions. While this approach facilitates market entry, it also creates regulatory gaps in supervising entities that may participate in securitisation-like structures particularly in the absence of mechanisms for monitoring assets and cash flows after transfer.

Overall, state regulation of securitisation in Vietnam remains indirect and fragmented, reflecting the fact that securitisation has not yet been formally recognised as an independent financial activity. Regulatory authorities currently oversee only discrete aspects of transactions within their respective sectors, without a unified, coordinated, and cross-sectoral regulatory framework. In the context of Vietnam's rapidly developing capital market, the establishment of a comprehensive legal and regulatory framework for securitisation is both necessary and urgent, in order to foster financial innovation while ensuring systemic safety and long-term macro-financial stability.

3. Legal Experiences in the State Management of Securitisation in several countries

3.1 The United States

The United States is widely regarded as having one of the most comprehensive legal frameworks for securitisation, significantly strengthened in the aftermath of the 2007–2008 global financial crisis.[14] The cornerstone of these reforms is the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, alongside the Securities Act of 1933 and the Securities Exchange Act of 1934. While the 1933 and 1934 Acts established the foundation for disclosure-based regulation and securities market supervision, the Dodd–Frank Act introduced targeted provisions aimed at more stringent oversight of securitisation transactions and systemically important financial institutions.[15] Compared to Vietnam, the U.S. experience demonstrates a regulatory approach characterised by coherence, combining a robust legal framework, effective supervisory mechanisms, and comprehensive tools for systemic risk control.

First, with respect to the legal framework governing securitisation, the United States has developed detailed rules regulating the transaction process. In particular, Regulation AB II (2014), issued by the Securities and Exchange Commission (SEC), establishes extensive disclosure requirements for asset-backed securities, including asset-

[14] Ngô Hồng Hạnh (2024), *tlđd.;* Trần Nguyễn Dạ Vi (dịch) (2015), *tlđd.;* Nguyễn Thị Huệ và Phạm Thị Tường Vân (2023), "Chứng khoán hoá các khoản nợ: Kinh nghiệm quốc tế và bài học cho Việt Nam", *Tạp chí Kinh tế Tài chính Việt Nam*, Số 1, tháng 2/2023, tr. 46, https://scholar.dlu.edu.vn/thuvienso/bitstream/DLU123456789/196010/1/CVv458S12023044.pdf, truy cập 01/1/2026; Trần Thị Vân Anh (2020), *tlđd.*

[15] Ngô Hồng Hạnh (2024), *tlđd.;* Phạm Tiến Đạt (2023), *tlđd.,* tr. 4

level data, cash flow structures, and risk factors.[16] In addition, accounting standards under U.S. GAAP and judicial precedents play a critical role in defining the criteria for "true sale" and the off-balance-sheet treatment of assets.[17]

By contrast, Vietnamese law does not yet provide equivalent rules on risk retention, lacks clear legal standards for "true sale," and has not developed a dedicated disclosure regime for securitisation. This highlights the absence of core legal instruments necessary to ensure transparency and control risks in securitisation transactions.

With regard to supervisory and regulatory mechanisms, the United States adopts a multi-agency model characterised by close coordination. The SEC, as the primary securities regulator, oversees issuance and disclosure in securitisation transactions, while the Federal Reserve (Fed), together with agencies such as the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), supervises financial institutions participating in securitisation. Following the financial crisis, the Financial Stability Oversight Council (FSOC) was established under the Dodd–Frank Act to monitor systemic risk across the financial system. The United States also places strong emphasis on regulating intermediaries, particularly credit rating agencies, by enhancing transparency and legal accountability under Title IX of the Dodd–Frank Act. This coordinated framework enables risk oversight not only at the level of individual transactions but also at the systemic level, particularly with respect to systemically important financial institutions.

In contrast, Vietnam's regulatory structure remains fragmented among the Ministry of Finance, the State Securities Commission, and the State Bank of Vietnam, without an institutionalised inter-agency coordination mechanism comparable to the FSOC. The absence of a central coordinating body limits the effectiveness of supervision over complex structured transactions such as securitisation.

In terms of systemic risk control and financial safety, U.S. law has introduced a range of important regulatory tools. Notably, Section 941 of the Dodd–Frank Act (codified as Section 15G of the Securities Exchange Act of 1934) establishes risk retention requirements, mandating that originators or sponsors retain at least 5% of the credit risk of securitised assets.[18] This provision addresses the "originate-to-distribute" model, under which lenders may have incentives to weaken credit standards due to their ability to transfer risk entirely to investors. Risk retention aligns the interests of originators with those of investors, thereby improving underwriting standards and asset quality.[19]

In addition, U.S. law incorporates complementary safeguards to curb excessive risk-taking by financial institutions. The Volcker Rule (Section 619 of the Dodd–Frank Act) restricts proprietary trading by banks and limits their investments in hedge funds and private equity funds, thereby indirectly constraining exposure to complex securitisation products.[20] At the same time, enhanced capital and liquidity requirements aligned with Basel III standards strengthen the resilience of the banking system.[21] Furthermore, both international standards and U.S. implementing rules adopt a cautious approach to re-securitisation transactions by imposing higher risk weights and certain restrictions, given their role in amplifying risks during the global financial crisis.[22]

By comparison, Vietnamese law currently provides only general risk management tools in the banking and securities sectors, without establishing securitisation-specific mechanisms such as risk retention requirements, product structure controls, or restrictions on re-securitisation. This reflects a significant gap between Vietnam and international standards in managing systemic risk.

With respect to transparency and disclosure, the United States has developed a highly detailed disclosure regime under Regulation AB II. Issuers are required to provide granular information on transaction structures, underlying asset characteristics, cash flow allocation mechanisms, valuation models, and potential risk factors. Disclosure obligations extend to asset-level data and require periodic updates on asset performance and cash flows. This framework enables investors to conduct independent risk assessments and reduces reliance on credit rating agencies.[23] In parallel, the Credit Rating Agency Reform Act of 2006 and subsequent amendments strengthen oversight of rating agencies to mitigate conflicts of interest. Enhanced liability for misrepresentation or omission of material information further reinforces market discipline and investor protection.

In contrast, Vietnamese law imposes only general disclosure requirements applicable to the securities market and does not provide specific rules tailored to securitisation products. The absence of detailed disclosure standards regarding underlying assets and cash flow structures may exacerbate

[16] Adam J. Levitin (2023), *Report on the institutional and regulatory differences between the American and European securitization markets*, p. 13, https://www.sachverstaendigenrat-wirtschaft.de/fileadmin/dateiablage/Arbeitspapiere/Arbeitspapier_03_2023.pdf, truy cập 01/1/2026

[17] Adam J. Levitin (2023), *tlđd*., tr. 14

[18] Hogan Lovells (2020), *Summary of key US and EU regulatory developments relating to securitization transactions 2020*, p. 9, https://www.lexology.com/library/detail.aspx?g=1f273969-174c-44e8-80a7-12d07f73bb0b, truy cập 01/1/2026

[19] Phạm Tiến Đạt (2023), *tlđd.,* tr. 4; Hogan Lovells (2020), *tlđd*., tr. 10

[20] 12 U.S. Code § 1851, https://www.law.cornell.edu/uscode/text/12/1851, truy cập 01/1/2026; Chapman, *Volcker Rule (Section 619)*, https://www.chapman.com/insights-sfi-16, truy cập 01/1/2026

[21] Basel Committee on Banking Supervision (BCBS) (2011), *Basel III: A global regulatory framework for more resilient banks and banking systems*, https://www.bis.org/publ/bcbs189.htm, truy cập 01/1/2026; Basel Committee on Banking Supervision (2016), *Revisions to the securitisation framework*, https://www.bis.org/bcbs/publ/d374.htm, truy cập 01/1/2026

[22] Basel Committee on Banking Supervision (2014, revised 2016), *Basel III Document Revisions to the securitisation framework*, Section 94, https://www.bis.org/bcbs/publ/d374.pdf, truy cập 01/1/2026

[23] Adam J. Levitin (2023), *tlđd*., tr. 13

information asymmetry and increase investor risk if such products are introduced in the future.

Overall, the legal experience of the United States suggests that effective state regulation of securitisation requires a comprehensive framework, supported by specific legal instruments, coordinated multi-agency supervision, and robust systemic risk controls. Compared with the U.S. model, Vietnam's legal framework remains at an early stage of development and requires substantial reform to align with international standards, both to facilitate market development and to ensure effective risk management.

3.2 The European Union

The European Union (EU) is widely recognised for developing a highly harmonised and standardised legal framework for securitisation, particularly in the aftermath of the 2007–2008 global financial crisis.[24] The centrepiece of this reform is Regulation (EU) 2017/2402 (the Securitisation Regulation), which establishes a common framework for securitisation and introduces the classification of Simple, Transparent and Standardised (STS) securitisations.[25] In addition, related provisions under the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD) further strengthen risk control mechanisms and capital requirements for participating financial institutions.[26] Compared with Vietnam, the EU experience reflects a regulatory approach characterised by uniformity, detailed rulemaking, and a strong alignment with financial stability objectives.

First, with regard to the development and refinement of the legal framework, the EU has established a system of directly applicable rules across Member States through the Securitisation Regulation. This framework governs the entire lifecycle of securitisation transactions, from the selection and transfer of underlying assets to issuance structures and the obligations of key participants such as originators, sponsors, and special purpose vehicles (SPVs).[27] Notably, the EU has clearly defined the criteria for STS securitisation, with the aim of promoting transactions that are simple, transparent, and readily assessable in terms of risk. At the same time, accounting rules and financial supervisory standards within the EU clarify the conditions for "true sale" and the derecognition of assets from balance sheets.[28] By contrast, Vietnamese law currently lacks a dedicated legal instrument governing securitisation and has not established comparable legal standards such as STS.

With respect to supervisory and regulatory mechanisms, the EU adopts a multi-level supervisory model involving coordination between national authorities and EU-level bodies, including the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA), and the European Insurance and Occupational Pensions Authority (EIOPA).[29] These institutions are responsible for issuing technical standards, providing implementation guidance, and overseeing compliance with securitisation rules. In particular, ESMA is tasked with developing and operating securitisation repositories, which serve as centralised databases to enhance transparency and facilitate market supervision. This framework enables the EU to monitor risks not only at the level of individual transactions but also across the market as a whole.[30] In contrast, Vietnam has yet to establish a formal inter-agency coordination mechanism or a centralised data infrastructure to support the supervision of complex structured financial transactions such as securitisation.

In terms of systemic risk control and financial safety, the EU has introduced relatively stringent risk management tools. A core provision is the risk retention requirement, which obliges the originator, sponsor, or original lender to retain at least 5% of the economic value of the securitised exposures. This requirement is designed to align the interests of transaction parties and mitigate moral hazard.[31] In addition, the EU imposes rigorous due diligence obligations, requiring institutional investors to conduct comprehensive risk assessments prior to investment.[32] Capital requirements under the CRR further apply differentiated risk weights to various types of securitisation exposures, with a particularly conservative approach toward re-securitisation[33]. Compared with the EU, Vietnamese law has not yet developed such specialised risk control instruments, relying instead on general financial safety rules in the banking and securities sectors.

With regard to transparency and disclosure, the EU mandates a high level of standardised and detailed disclosure. Under the Securitisation Regulation, transaction parties are required to provide comprehensive information on transaction structures, underlying asset characteristics, cash flows, risk models, and related factors.[34] This information must be reported on a periodic basis and stored in securitisation repositories, ensuring accessibility for both investors and supervisory authorities. The EU framework also establishes clear legal liability for misrepresentation or incomplete disclosure. These measures reduce information asymmetry and strengthen market discipline.[35] By contrast, Vietnam does not yet have a dedicated disclosure regime for securitisation, particularly with respect to asset-level data.

Regarding the state's role in guiding and supporting market development, the EU adopts a balanced approach that

[24] Hogan Lovells (2020), *Summary of key US and EU regulatory developments relating to securitization transactions 2020*, https://www.lexology.com/library/detail.aspx?g=1f273969-174c-44e8-80a7-12d07f73bb0b, truy cập 01/1/2026

[25] Sanjev Warna-kula-suriya and Kamal Dalal Latham & Watkins (2021), *tlđd*., tr. 22

[26] Sanjev Warna-kula-suriya and Kamal Dalal Latham & Watkins (2021), *tlđd*., tr. 13

[27] Adam J. Levitin (2023), *tlđd*., tr. 13; Sanjev Warna-kula-suriya and Kamal Dalal Latham & Watkins (2021), *tlđd*., tr. 9

[28] Adam J. Levitin (2023), *tlđd*., tr. 14

[29] Georges Duponcheele, Marc Fayémi and Fernando González Miranda (2024), *European Competitiveness and Securitisation Regulations,* p. 7, https://www.riskcontrollimited.com/wp-content/uploads/2024/08/European-Competitiveness-and-Securitisation-Regulations-v55-1.pdf, truy cập 01/1/2026

[30] Hogan Lovells (2020), *tlđd.*, tr. 22

[31] Sanjev Warna-kula-suriya and Kamal Dalal Latham & Watkins (2021), *tlđd*., tr. 3

[32] Sanjev Warna-kula-suriya and Kamal Dalal Latham & Watkins (2021), *tlđd*., tr. 10

[33] Adam J. Levitin (2023), *tlđd*., tr. 17

[34] Sanjev Warna-kula-suriya and Kamal Dalal Latham & Watkins (2021), *tlđd*., tr. 10

[35] Hogan Lovells (2020), *tlđd.*, tr. 22

combines risk control with the promotion of sustainable market growth. The STS framework serves as a key policy tool to incentivise high-quality securitisation transactions while enhancing investor confidence.[36] In addition, the EU supports market development through regulatory harmonisation across Member States, reducing legal fragmentation and facilitating the free flow of capital within the internal market. Institutions such as the EBA and ESMA also regularly issue guidelines and market assessments to inform policy direction.[37] In contrast, Vietnam has yet to develop targeted policy measures to guide the development of a securitisation market or to promote safe and transparent financial products.

Overall, the EU experience demonstrates that an effective legal framework for securitisation should be closely aligned with transparency standards, supported by multi-layered supervisory mechanisms, and reinforced by robust risk control tools, while also incorporating policies that guide market development. These elements provide valuable lessons for Vietnam in the process of refining its legal framework for securitisation in the coming years.

3.3 Japan

Japan is one of the Asian jurisdictions that developed a relatively early and well-structured legal framework for securitisation, particularly following financial reforms in the late 1990s.[38] The core of this framework is the Asset Securitization Law (ASL) of 1998 (as subsequently amended), together with provisions under the Financial Instruments and Exchange Act (FIEA).[39] Japan's legal system adopts a specialised approach by establishing a dedicated legal structure for securitisation, while integrating it closely with financial supervision and systemic risk control mechanisms.[40] Compared with Vietnam, Japan's experience highlights the importance of adopting a dedicated legal framework and appropriate intermediary structures tailored to the specific characteristics of securitisation.

First, with respect to the development and refinement of the legal framework, Japan enacted the Asset Securitization Law (ASL) to directly regulate securitisation transactions. This law clearly defines the legal structure of such transactions, including the establishment of special purpose companies (SPCs), mechanisms for the transfer of underlying assets, and the issuance of securities backed by asset-generated cash flows.[41] In addition, Japanese law provides detailed rules on the "true sale" requirement to ensure that assets are effectively segregated from the originator's balance sheet.[42] Furthermore, the FIEA establishes general rules governing issuance, trading, and disclosure obligations for financial products, including securitisation instruments.[43] By contrast, Vietnamese law does not yet provide an equivalent specialised statute, nor does it fully define the essential legal components of a securitisation transaction.

Regarding supervisory and regulatory mechanisms, Japan adopts a centralised regulatory model under the coordination of the Financial Services Agency (FSA). The FSA exercises comprehensive oversight over financial institutions, securities markets, and securitisation transactions.[44] In addition, self-regulatory organisations such as the Japan Securities Dealers Association (JSDA) play an active role in setting market rules and supervising market conduct.[45] This framework enables Japan to ensure regulatory consistency while enhancing its capacity to detect and address risks. In contrast, Vietnam's supervisory structure remains fragmented across multiple authorities and lacks a central coordinating body for complex structured financial products.

In terms of systemic risk control and financial safety, Japan has established a range of legal tools to manage risks associated with securitisation. First, legal rules require underlying assets to meet certain standards of quality and cash flow-generating capacity.[46] The "true sale" and asset segregation requirements are clearly defined to protect investors from the insolvency risk of originators.[47] Japan also applies capital adequacy and risk management requirements to financial institutions involved in securitisation, in line with international standards such as Basel III[48]. Moreover, accounting and supervisory rules limit the use of overly complex or opaque securitisation structures. In comparison, Vietnamese law does not yet provide specific risk control mechanisms for securitisation,

[36] Sanjev Warna-kula-suriya and Kamal Dalal Latham & Watkins (2021), *tlđd*., tr. 9

[37] Hogan Lovells (2020), *tlđd.*, tr. 3; Clifford Chance (2019), *The EU securitisation regulation – considerations for asia pacific issuers, originators, sponsors and their advisers*, p. 1, https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2019/03/the-eu-securitisation-regulation-considerations-for-asia-pacific-issuers-originators-sponsors-and-their-advisers.pdf, truy cập 01/1/2026

[38] Lê Minh Trường (2023), *Ứng dụng chứng khoán hóa trong huy động vốn của các doanh nghiệp Việt Nam,* https://luatminhkhue.vn/ung-dung-chung-khoan-hoa-trong-huy-dong-von-cua-cac-doanh-nghiep-viet-nam.aspx, truy cập 01/1/2026

[39] Hajime Ueno and Akihiro Shiba (2014), *Structured finance and securitisation in Japan: Overview*, pp. 1-2, https://www.nishimura.com/sites/default/files/images/Practical_Law_Strucutred_Finance_and_Securitisation_1412.pdf, truy cập 01/1/2026

[40] Motohiro Yanagawa, Takashi Tsukioka and Yushi Hegawa (2022), *Structured Finance & Securitisation Japan,* p. 5, https://www.nagashima.com/wp-content/uploads/2022/03/gtdt_sfs_2022.pdf, truy cập 01/1/2026

[41] Hajime Ueno and Akihiro Shiba (2014), *tlđd.*, tr. 1

[42] Motohiro Yanagawa, Takashi Tsukioka and Yushi Hegawa (2022), *tlđd.*, tr. 6

[43] Hajime Ueno and Akihiro Shiba (2014), *tlđd.*, tr. 2

[44] Hajime Ueno and Akihiro Shiba (2014), *tlđd.*, tr. 2; Motohiro Yanagawa, Takashi Tsukioka and Yushi Hegawa (2022), *tlđd.*, tr. 7

[45] Nguyễn Thị Thanh Hương, *Kinh nghiệm phát triển thị trường trái phiếu doanh nghiệp Nhật Bản*, tr. 258, https://repository.vnu.edu.vn/server/api/core/bitstreams/a4977117-d456-4306-b7ce-aa1f7dd64d47/content, truy cập 01/1/2026

[46] Motohiro Yanagawa, Takashi Tsukioka and Yushi Hegawa (2022), *tlđd.*, tr. 6

[47] Hajime Ueno (2020), *The securitisation & structured finance handbook 2020*, p. 1, https://www.nishimura.com/en/knowledge/publications/20190901-25581, truy cập 01/1/2026

[48] Hajime Ueno and Akihiro Shiba (2014), *tlđd.*, tr. 2

particularly with respect to risk retention requirements or standards for underlying assets.

With respect to transparency and disclosure, Japan requires issuers of securitisation products to provide comprehensive information on transaction structures, underlying assets, expected cash flows, and associated risks in accordance with the FIEA. Such information must be updated periodically and is subject to regulatory review.[49] Credit rating agencies also play a significant role in assessing the risk profile of securitisation products, and their activities are closely supervised to mitigate conflicts of interest. This framework enhances transparency and supports informed investment decisions. [50] By contrast, Vietnam currently lacks a standardised and detailed disclosure regime specifically tailored to securitisation transactions.

Finally, regarding the state's role in guiding and supporting market development, Japan adopts a cautious yet proactive approach. The government and regulatory authorities not only establish legal rules but also promote the use of securitisation as a tool for resolving non-performing loans and mobilising long-term capital, particularly in the real estate and banking sectors. [51] In addition, Japan supports market development through the enhancement of legal infrastructure, strengthening supervisory capacity, and promoting international cooperation. This approach has contributed to the stable development of the securitisation market while limiting systemic risks.[52] In contrast, Vietnam has yet to adopt a clear long-term strategy or policy framework for the development of a securitisation market.

Overall, Japan's experience demonstrates that the establishment of a dedicated legal framework, combined with centralised supervision and effective risk control mechanisms, is essential for the safe and sustainable development of securitisation markets. These lessons provide valuable guidance for Vietnam in the process of refining its legal framework in this field.

4. Lessons for Vietnam

Drawing on the experiences of the United States, the European Union, and Japan, several important lessons can be identified for Vietnam in the process of developing and refining its legal framework for state regulation of securitisation. These lessons aim to ensure a balanced approach that both promotes market development and effectively controls financial risks. Importantly, they extend beyond the establishment of legal rules to encompass supervisory design, risk control mechanisms, and market development strategies.

First, Vietnam should establish a unified and specialised legal framework for the state regulation of securitisation. International experience demonstrates that effective regulation requires comprehensive legal provisions governing the entire transaction structure, including underlying assets, asset transfer mechanisms, and the rights and obligations of participating entities. Accordingly, Vietnamese law should formally recognise securitisation as an independent regulatory subject, either by incorporating specific provisions into securities legislation or by enacting a dedicated legal instrument. This would provide a coherent basis for regulatory authorities to exercise their functions in a consistent and systematic manner, rather than relying on fragmented rules as at present.

Second, it is necessary to refine legal provisions governing the participants in securitisation transactions, particularly originators and special purpose vehicles (SPVs). The experiences of the EU and Japan indicate that clearly defining the legal status, operational conditions, and responsibilities of each participant is essential for effective risk control and investor protection. Therefore, Vietnamese law should establish clear rules on eligibility requirements, disclosure obligations, legal liability, and supervisory mechanisms for these entities, while also incorporating the principles of "true sale" and asset segregation to facilitate regulatory oversight and mitigate systemic risk.

Third, Vietnam should strengthen supervisory and regulatory mechanisms by adopting a coordinated, risk-based approach. International experience shows that securitisation is inherently cross-sectoral, involving capital markets, the banking system, and macro-financial stability. As such, state regulation should be designed to ensure close coordination among key authorities, including the Ministry of Finance, the State Securities Commission, and the State Bank of Vietnam. At the same time, Vietnam should consider establishing a formal mechanism for systemic risk coordination, as well as developing centralised information systems and data repositories for securitisation transactions to support supervision, risk monitoring, and early warning functions.

Fourth, Vietnam should introduce specialised legal tools to control systemic risk in securitisation activities. Lessons from the United States and the EU demonstrate that general regulatory measures are insufficient in this domain; instead, targeted instruments are required, such as risk retention requirements, standards for underlying assets, controls over transaction structures, and restrictions on high-risk or overly complex transactions. The adoption of such tools would enable regulators to better monitor asset quality, mitigate moral hazard, and safeguard financial system stability.

Fifth, Vietnam should enhance disclosure requirements and market transparency from a regulatory perspective. International experience underscores that transparency is a critical regulatory tool for reducing information asymmetry and strengthening market discipline. Accordingly, Vietnamese law should mandate detailed, standardised, and ongoing disclosure obligations for securitisation transactions, including information on underlying assets, cash flows, risk allocation structures, and asset performance. In parallel, regulatory authorities should establish robust mechanisms for monitoring, auditing, and sanctioning violations related to misrepresentation or incomplete disclosure.

Sixth, state regulation of securitisation should incorporate a cautious yet proactive approach to market development. The experiences of the EU and Japan show that, in addition to

[49] Masayuki Fukuda, Motohiro Yanagawa and Hideaki Suda (2024), *The Legal 500 Country Comparative Guides Japan securitisation*, p. 1, https://www.nagashima.com/wp-content/uploads/2024/03/legal500_securitisation_comparative_2024.pdf, truy cập 01/1/2026

[50] Masayuki Fukuda, Motohiro Yanagawa and Hideaki Suda (2024), *tlđd.*, tr. 7

[51] Edward J. Park (1999), "Allowing Japanese Banks to Engage in Securitization: Potential Benefits, Regulatory Obstacles, and Theories for Reform", *Pacific Rim Law & Policy Journal* 8, No. 3, p. 729

[52] Hoàng Thị Thanh Hằng (2008), *tlđd*., tr. 29; Hajime Ueno and Akihiro Shiba (2014), *tlđd.*, tr. 3

risk control, the state plays an important role in guiding market development by encouraging simple, transparent, and high-quality securitisation products. Vietnam should therefore adopt a phased development strategy, beginning with pilot programmes and gradually expanding the market, while simultaneously enhancing the capacity of market participants and supervisory institutions.

Overall, international experience suggests that an effective legal framework for state regulation of securitisation must be comprehensive in design, combining clear legal rules, effective supervisory mechanisms, and specialised risk control tools. These orientations provide an important foundation for Vietnam in refining its legal system in this field, ensuring that market development proceeds in a safe and sustainable manner.