

Luxembourg securitisation vehicles

The securitisation of assets is a developing mechanism in Luxembourg which consists in turning illiquid assets to liquid and marketable ones.

The securitisation may be defined as a financing process by which an entity transfers illiquid assets or risks to a dedicated securitisation vehicle in exchange for cash equivalent; the securitisation vehicle being financed by issuance of transferable securities of which return depends on the income generated by securitised assets.

With the securitisation law of 22nd March 2004, Luxembourg has strengthened its economic competitiveness in this matter by offering one of the most favourable legal, regulatory and tax framework in Europe.

At a glance

- ▶ No limitation with regards to the securitised assets
- ▶ Tax neutrality of securitisation transactions
- ▶ Possibility of segregation through the creation of various compartments
- ▶ No supervision unless continuous issuance of securities to the public

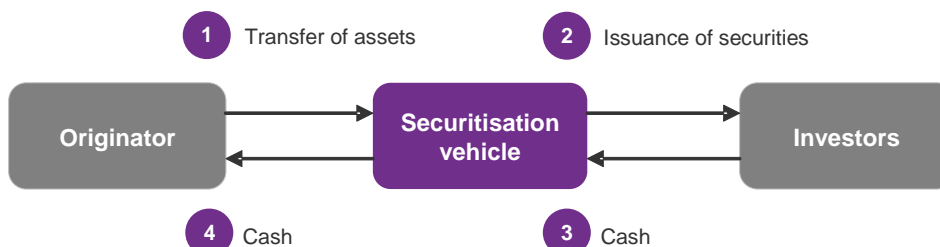
1. Securitisation under Luxembourg law

Securitisation is defined in Luxembourg as an operation by which a securitisation vehicle acquires or assumes risks (either directly or through another entity) by issuing in turn transferable securities (in bearer or registered form) of which value and yield reflect the risks borne.

The securitisation vehicle may assume risks in various ways such as acquiring assets, guaranteeing liabilities or entering into any form of obligation. This flexibility allows the securitisation transactions to be executed in two forms:

- ▶ As a true sale transaction by transferring the ownership of a pool of assets to the securitisation vehicle, or
- ▶ As a synthetic transaction by transferring risks associated with a pool of assets only to the securitisation vehicle.

The law does not provide for any restriction regarding the asset classes that may be securitised. As a result, all asset classes generating cash flows can be securitised such as receivables, mortgage loans, real estate, intellectual property rights, etc ...



2. Legal aspects

The securitisation vehicle can be incorporated either in a corporate form “securitisation company” or in a contractual form “securitisation fund”.

2.1 Securitisation company

The securitisation company can take the form of :

- ▶ a public limited liability company (Société Anonyme, “SA”);
- ▶ a private limited liability company (Société à Responsabilité Limitée, “SàRL”);
- ▶ a partnership limited by shares (Société en Commandite par Actions, “SCA”);
- ▶ a co-operative company in the form of an public limited liability company (“SCoSA”).

The securitisation company is not required to have a specific minimum share capital. As a result, the minimum share capital depends on the legal form chosen and ranges between EUR 12.500 and EUR 31.000.

It is important to note that the securitisation company may be set up as an umbrella vehicle with multiple compartments with strict segregation of assets and liabilities between compartments.

2.2 Securitisation fund

The securitisation fund may be organised as a fiduciary contract or as a co-ownership (Fonds Commun de Placement - FCP). In both cases, the securitisation fund has no legal personality and must therefore be managed by a Luxembourg-based management company.

The securitisation fund is not subject to any requirements in terms of minimum share capital.

As for the securitisation company, the compartments may be created, each one corresponding to a distinct part of the assets financed by distinct securities.

3. Regulatory aspects

Only securitisation vehicles engaged in the continuous issuance of securities to the public are subject to prior authorisation and regulation of the Luxembourg supervisory authority of the financial sector ("CSSF").

The CSSF considers that securities are issued on continuous basis where more than three issues per year are made to the public. In all other cases (e.g. securitisation vehicles making a single securities issue - even in several tranches - to the public or issuing securities in a private placement), the securitisation vehicle is not subject to the supervision of the CSSF.

Whereas unregulated securitisation vehicles are not required to appoint a custodian bank, regulated securitisation vehicles have to entrust the custody of their assets to a financial institution established or having its registered office in Luxembourg.

The annual accounts and financial statements of both regulated and unregulated securitisation vehicles have to be audited by a Luxembourg independent auditor.

4. Tax aspects

The tax treatment of the securitisation vehicle depends on the legal form under which it has been incorporated. However, whatever the form chosen, the tax neutrality is achieved.

4.1 Securitisation company

The securitisation company is subject to Luxembourg corporate income tax and municipal business tax at the global rate of 29.22% (from 2013) and is therefore entitled to the benefit of the Luxembourg double tax treaty network and the EU directives.

However, as any commitment to remunerate the investors and other creditors qualifies as tax deductible interest payments for tax purposes, the taxable profit of the securitisation company is in practice reduced to nil.

It must be noted that the commitment towards investors and creditors being treated as interest payments, no withholding tax is levied by the securitisation company, except where required by the EU Savings Directive.

The securitisation company is also exempt from the annual net worth tax of 0.5%.

As from 2013, Luxembourg companies that have aggregate financial assets, securities and bank deposits exceeding 90% of their balance sheet total are subject to a minimum corporate income tax of EUR 3,210 (including solidarity tax rate of 7%). For the other Luxembourg companies, a minimum annual taxation ranging between EUR 535 and EUR 21,400 (including solidarity tax rate of 7%) and which is determined on the basis of their total balance sheet of the tax year concerned, will be due.

4.2 Securitisation fund

The securitisation fund having no legal personality, it is considered as tax transparent entity for tax purposes. As a result, the investors are subject to similar tax treatment as if they invest directly in the assets portfolio.

The securitisation fund is not subject to corporate income tax, municipal business tax and net worth tax and no withholding tax is levied on income distributed by the securitisation fund, except application of the EU Savings Directive.

5. Thin capitalisation rules

The securitisation vehicle is not subject to any debt-equity ratio. The securitisation vehicle can therefore be financed with immobilising a minimum amount of capital.

6. Services provided by Experta Luxembourg

Experta Luxembourg is a provider of services related to corporate and investment structures, as well as financial and estate planning. Experta Luxembourg assists private individuals, corporate clients and institutional investors with tailor-made solutions making use of creative planning techniques from various jurisdictions.

Experta Luxembourg may assist clients with the incorporation and management of a securitisation vehicle. These services include the set up of a structure organised through Luxembourg, administrative work at the incorporation of the vehicle, as well as day-to-day administrative aspects, such as accounting, tax work and secretarial services.

For inquiries please contact us at **+352.26.92.55-1** or email us at experta@experta.lu.

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The objective of this fact sheet is to provide the reader with a general view of relevant aspects relating to the securitisation vehicle. No action shall be taken without prior consultation with Experta Luxembourg, as this document alone cannot cover all aspects relating to the incorporation and administration of the securitisation vehicle. Finally, please note that this document is provided for information purposes only and should not be understood as legal or fiscal advice.

**Experta Corporate and Trust Services S.A.,
Luxembourg**
Website: www.experta.lu

Address: 42, rue de la Vallée, L-2661 Luxembourg
Phone: +352 269 255 1
Fax: +352 269 255 3366