

Luxembourg Securitisation Vehicle

A new facility for tax efficient capital market investments and intra-group transactions

2004

A new Law of 22 March 2004 (enacted by the Luxembourg Parliament on 9 March 2004) introduces an attractive legal, regulatory and tax framework for Luxembourg securitisation vehicles (SV).

The purpose of the Law is to facilitate capital market transactions and intra-group transactions as well as a combination of both.

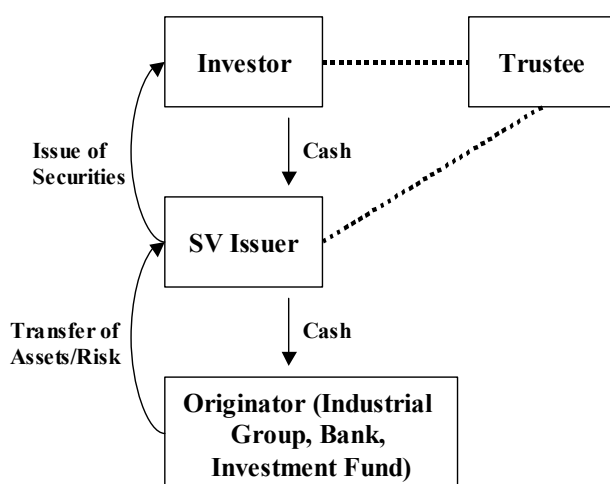
Inspired by the well-known investment funds regime, the Law introduces securitisation vehicles in corporate form as well as in the form of a securitisation fund.

The Law aims to offer maximum flexibility, a well-regulated legal framework and investors' and creditors' protection by providing for segregated asset classes (compartments), securing investors' and creditors' rights and enhancing bankruptcy remoteness. A further measure of investor security has been introduced with the creation of a new category of financial sector professional: the fiduciary representative, whose main role is to ensure the rights of holders of securities issued by the SV. The wide range of securitisation transactions covered by the Law and a regime of tax neutrality give this new investment vehicle additional potential to attract and launch further new investment projects in Luxembourg.

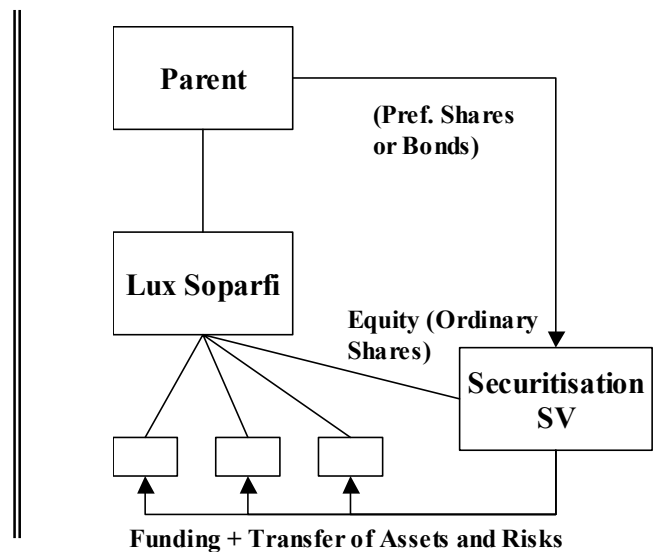


On the market, SVs are used in a variety of more or less complex structures, such as:

Issuance of securities to the capital market



Intra-group transactions



DEFINITION AND CHARACTERISTICS OF A SECURITISATION VEHICLE (SV)

General

The Law defines securitisation as the operation by which a SV purchases or assumes, directly or through the intervention of intermediary entities, the risks relating to assets or engagements by issuing securities (shares, bonds...), the value or yield of which depend on such risks.

These risks may relate to all kind of assets whether movable or immovable, tangible or intangible. The risk may also result from obligations assumed by third parties or inherent to all or part of the activities realised by third parties.

The risks may be held by the SV either by purchasing the assets or by guaranteeing the liabilities or by entering into any other kind of obligation.

Legal forms

The Law allows the securitisation vehicle to take either the legal form of a company or that of a fund run by a management company.



The securitisation company can take the form of a public company (*société anonyme*), a private company (*société à responsabilité limitée*), a partnership limited by shares (*société en commandite par actions*) or a co-operative company (*société coopérative sous forme de société anonyme*).

The securitisation fund can be organised as a joint ownership or as a fiduciary property.

Both, the securitisation company and the securitisation fund can be set up as an “umbrella” structure, i.e. comprising compartments with segregated classes of assets and liabilities, which may be liquidated separately.

Authorisation and supervision

Securitisation transactions do not fall under the sphere of competence of the regulator for the insurance sector.

The SV may exist as:

- i) a non-regulated entity – if the SV executes a single or irregular issue of securities – or
- ii) a regulated entity – compulsory if the SV issues securities to the public on a regular (continuous) basis. In such case, the SV has to apply for a licence from the CSSF, the supervisory authority of the Luxembourg financial sector. The procedure for application for a licence is similar to that developed for the licensing of undertakings for collective investment (UCITS).

Comparison with existing securitisation vehicles

The new Law increases investors’ and creditors’ protection by allowing separate asset classes, by introducing measures to render remote the likelihood of the investment vehicle being declared bankrupt and by explicitly validating limited recourse provisions.

The new Law is optional: existing securitisation vehicles as well as SVs set up after the publication of the new Law may elect to be governed by the new Law.

Fiduciary representative

In order to offer investors / creditors an instrument to which they can entrust the safeguarding of their interests, the Law provides for a new activity in the financial sector: the fiduciary representative, qualified as a “professional of the financial sector”.

The exercise of the activity is subject to prior approval by the CSSF. The fiduciary representative must fulfill several requirements (i.e. minimum share capital of € 400.000, registered office in Luxembourg, appropriate organisational structure etc). An anglo-saxon type of trust duly recognised in Luxembourg since the Law of August 2003 on the recognition of Trusts in Luxembourg may be used as well.

TAX TREATMENT OF THE SECURITISATION VEHICLE

Securitisation Company

The equity contribution to a securitisation company will only be subject to a fixed capital duty rate (still to be determined by a decree) with a maximum of € 1,250. The nominal capital duty will simplify the setting up and capitalisation of this type of vehicle.

Securitisation companies are resident companies fully liable to Luxembourg corporate and municipal business tax at an aggregate tax rate of 30.38%. Undertakings made to investors (mainly shareholders) and to other creditors (mainly bondholders), i.e. dividends and interest, are, however, fully deductible. As a result, a significant reduction of taxable basis should be achieved.

Since securitisation companies are fully tax liable resident companies, they should benefit from the tax treaties concluded by Luxembourg with other countries and from the EU parent subsidiary directive. This argumentation is supported by a comparison with a certain number of existing low-taxed vehicles in other EU countries. This issue would however need an in-depth country-by-country analysis based on the facts and circumstances of each specific case.

Securitisation Fund

The securitisation fund is treated the same as a collective investment fund, i.e. the fund is exempt from corporate income tax and municipal business tax. Unlike FCPs, securitisation funds also benefit from a subscription tax exemption.

The management company of the fund is subject to a capital duty of maximum € 1,250.

Common features

Securitisation vehicles are exempt from net worth tax and registration taxes.

Management services provided to the securitisation vehicles are VAT exempt.



Investors

The shareholders of the securitisation company or the unitholders of the securitisation fund are treated like bondholders.

Dividend distributions, payments on fund units and interest payments made by securitisation vehicles are not subject to domestic withholding tax (notwithstanding the application of the withholding tax as referred to in the EU savings directive).

Luxembourg resident investors holding shares of securitisation vehicles can neither benefit from the domestic participation exemption regime (dividends and capital gains) nor from the partial (50 percent) exemption on dividends.

The Law prohibits the securitisation vehicle from being a member of a fiscal consolidation group.

Useful Links

Interesting market data

European Securitisation Forum www.europeansecuritisation.com

American Securitization Forum www.americansecuritization.com

The Bond Market Association www.bondmarkets.com

The Asset Managers Forum www.theassetmanager.com

Bourse de Luxembourg www.bourse.lu

CSSF www.cssf.lu

Technical details regarding the new law

Codeplafi www.codeplafi.lu

Chambre des Députés www.chd.lu

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