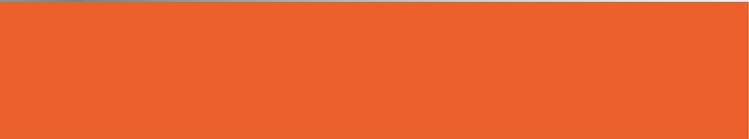




SECURITISATION IN LUXEMBOURG





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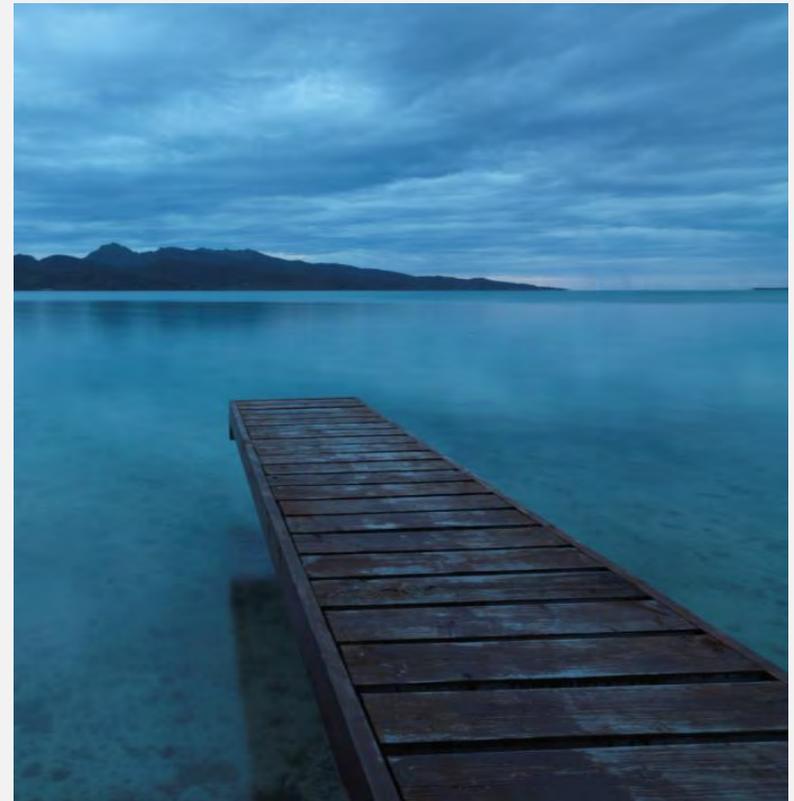
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Luxembourg is a leading market and domicile for the securitisation market.

The law of March 22, 2004 on securitisation (the “**Securitisation Law**”) and the law of August 10, 1915 on commercial companies, as amended (the “**1915 Law**”) govern Luxembourg securitisation vehicles (the “**SeVs**”). The Securitisation Law allows tax neutral and legally simplified issues of Asset-Backed-Securities (ABS) in the form of regulated or unregulated securities companies and securitisation funds.

The Securitisation Law, with its flexible, lightly regulated and tax efficient regime, provides a wide range of vehicles for securitisation and structured finance transactions. On top, the Securitisation Law is offering legal certainty, bankruptcy remoteness mechanisms.

The success of the Securitisation Law is confirmed by the significant number of SeVs incorporated in Luxembourg over the last years, as well as the diversity in terms of structures and eligible assets.





Definition:

According to the Securitisation Law, “**Securitisation**” means “the transaction by which a securitisation undertaking acquires or assumes, directly or through another undertaking, risks relating to claims, other assets, or obligations assumed by third parties or inherent to all or part of the activities of third parties and issues securities, whose value or yield depends on such risks.

“**Securitisation undertakings**”, within the meaning of the Securitisation Law, are:

- undertakings which carry out the securitisation **in full**; or
- undertakings which participate in such a transaction by assuming all or part of the securitised risks – the **acquisition vehicles**; or
- undertakings which participate in such a transaction by the issuing of securities to ensure the financing thereof – the **issuing vehicles**.

The articles of incorporation, management regulations or issue documents are subject to and shall refer to the provisions of the Securitisation Law.



Available forms of securitisation vehicles

Securitisation vehicles may take the form of a **company** (corporate entity) or a **securitisation fund**.

If set up as a **company**, the SeV may take the legal form of (i) a public limited company (*société anonyme* - S.A.), (ii) a private limited liability company (*société à responsabilité limitée* – S.à r.l.), (iii) a corporate partnership limited by shares (*société en commandite par actions* – S.C.A.) or (iv) a co-operative company organized as a public limited liability company. Such entities are also governed by the provisions of the 1915 Law above mentioned. Securitisation companies are not subject to specific minimum capital requirement. As a consequence, the minimum share capital of the corporate entities above mentioned depends upon the legal form as governed by the 1915 Law (min EUR 12,000 for S.à r.l. or EUR 30,000 for S.A.). This minimum share capital is referring to the whole legal entity and not to each single compartment of the securitisation vehicle.

If the securitisation vehicle is set up as a **fund** (co-ownership of assets without any legal personality), the SeV will be managed by a management company (which will be a corporate entity with legal personality). Securitisation funds are not subject to any minimum capital requirement while the management company shall comply with the provisions of the 1915 Law above described.

In practice, the majority of the securitisation vehicles are set up and structured in Luxembourg as companies (corporate entities).





Unregulated...or regulated (supervision)

A securitisation vehicle is **not subject to any prior authorisation nor supervision** from the Luxembourgian supervisory authorities (*Commission de Surveillance du Secteur Financier* – C.S.S.F.) unless the SeV issues securities to the public on a continuous basis (at least 3 times per year according to CSSF 2007 Report).



To the extent that securities are issued (even more than 3 times per year) to professional investors qualified within the meaning of Annex II of Directive 2004/39/EC dated 21 April 2004 (the “**MiFID Directive**”), the issue is not considered as an issue to the public. The listing of an issue on a regulated or alternative market does not ipso facto entail that the issue is deemed to be placed with the public.

A private placement memorandum distributed to prospective investors is not considered as issuance to the public to the extent that any institutional investor or financial intermediary having subscribed the SeV’s securities is not placing nor marketing the relevant securities with the public.

For the regulated SeVs, the C.S.S.F. shall approve the articles of association and or the management regulations of the SeV and authorize the management company or the directors of the corporate SeV (competence, reputation and honorability).



Compartments

Another illustration of the high level of flexibility which characterizes the securitisations vehicles in Luxembourg: the **compartment segregation**.

If duly authorized in the constitutional documents (or management regulations), the management body of the SeV may create one or several compartments. As a result, each compartment is treated as a separate entity representing a different part of the assets and liabilities of the SeV. The rights (and recourse) of the investors and relevant creditors related to one specific compartment are strictly limited to the assets of the relevant compartment.

The liquidation of a dedicated compartment of the SeV at the termination date of the relevant securitisation transaction is not impacting the liquidation of any other compartment of the SeV nor the existence of the SeVs itself.

Asset classes qualifying for securitisation - Securitisable risks

Another illustration of the flexibility of the Securitisation Law is the large range of asset classes qualifying for securitisation.

No specific limitation exists with regards to the nature of the assets and risks subject to securitisation. The underlying assets and risks can be represented by debt (commercial or not), securities (shares, secured or unsecured loans, non-performing loans, bond obligations), activity with a determined value or a future income (intellectual property, royalties, trade receivables, lease receivables, future claims), real estate, or any mix thereof.

A repartition of risk amongst the underlying assets in the SeVs is not required by the Securitisation Law.

Clarifications regarding the legal environment applying to securitisable risks were provided by the C.S.S.F. in its 2007 Report confirming the high level of flexibility and the large range of assets and risks that can be considered for securitisation transactions.



Forms of securitisation transactions & Structuring

Forms of securitisation transactions:

- **True Sale:** the legal and beneficial interests in the assets are transferred, directly or indirectly, to a securitisation vehicle.
- **Synthetic Transaction:** the originator is buying a credit risk protection through credit derivatives without transferring the ownership of the underlying assets.

Structuring by way of **single structure** or **dual structure**: a securitisation transaction can be completed by acquiring directly the underlying assets (single structure) or by using SPVs (acquiring special purpose vehicles funded by the securitisation vehicle) which purchases the assets and risks.



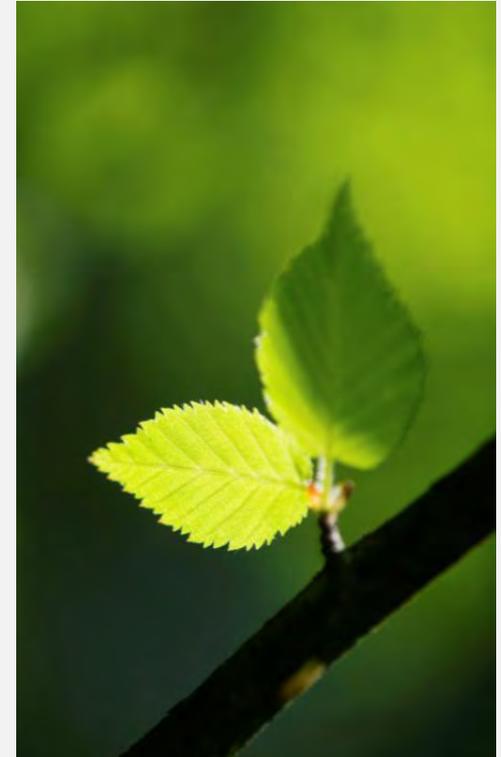
Funding – Financing

The underlying assets and risks acquired by the SeV may be funded or financed by issuance of securities by way of **equity** (ordinary shares, preferred shares, tracking shares) **and/or debt securities** (notes, bond, loans, preferred equity certificates) in bearer or registered form (subject to limitations of the 1915 Law).

The value and/or the yield of the securities issued by the SeV must reflect the underlying risks assumed in the securitisation and there must be an effective link between the value or yield of the securities and the underlying risks. The repayment of such securities will be also linked to the capability to recover the underlying assets and risks owned by the securitisation vehicle. Insolvency remoteness can be reached by using limited recourse, non petition and other subordination provisions in the issuance or articles of association of the SeV.

The securitisation vehicle is **not subject to any indebtedness ratio**.

Waterfall payment sequence: the waterfall indicates the priority level of distribution of available proceeds (net of transaction fees) arising from the underlying assets or risks, to the investors of the securitisation vehicle. The sequence shall include several subordination payment clauses and shall consider administrative and other ancillary costs/fees payment.





Reporting

Unregulated and regulated securitisations vehicles, as defined by the Securitisation Law, shall comply with the reporting obligations arising from the Regulation (EC) Nr 24/2009 of the European Central Bank (securitisation transactions statistics) and the Circular BCL 2009/224 of the Luxembourg Central Bank. Some derogations are existing and shall be granted by the Luxembourg Central Bank.



Management

The SeV structured as a company will be represented according to the provisions of the relevant legal form as described in the Corporate Law.

The SeV structured as a fund (without any legal personality) will be represented by a management company which shall have a corporate form having a legal personality (duly represented by the 1915 Law).

A SeV shall have a passive role by managing its assets. It cannot be involved directly in commercial activities or any activity usually performed by an entrepreneur, neither engaging any risk arising from such activities.



Services Providers & Advisors

Since the SeV shall have a passive role as above described, it will appoint an asset manager/advisor for selecting assets and monitoring the portfolio, and/or specialized servicer for collecting the securitised receivables as well as any other advisor specialized for recovering the underlying assets the underlying risks owned by or assigned to the SeV (incl. paying agent). Respectively the SeV will appoint corporate services provider, tax & accounting advisor, calculation & reporting agent for assisting the entire securitisation management process under the responsibility of the management body of the SeV.

Auditor

Both regulated and unregulated securitisation vehicles shall appoint one or more independent auditor(s) (*réviseurs d'entreprises*) for supervising the annual accounts and financial statements.

Custody

Unregulated securitisation vehicles are not required to appoint custodian bank. Regulated SeVs shall appoint a financial institution located in Luxembourg as custody of its assets and securities.

Rating agencies, credit enhancement provider and or liquidity provider may be appointed or involved in the securitisation transactions for more complex transactions related to financial institutions or institutional investors and/or for regulated securitisation vehicles (especially for vehicles issuing securities to the public, as defined above, on a continuous basis according to CSSF 2007 Report).





Accounting

The annual accounts must be prepared in accordance with the generally accepted accounting principles as provided by the Luxembourg law, respectively Accounting Law dated 19/12/2002 for securitisation companies or Investment Law dated 17 December 2010 for securitisation funds.

For securitisation companies, Lux GAAP are driven the assets valuation at historical cost while an option exists for determining assets at fair value (IFRS requirement) without having IFRS rules applicable to the entire financial statements. Finally IFRS rules can be adopted but required a level of disclosure and administrative overheads.

Pursuant to article 75 of the Accounting Law dated 19/12/2002, the Luxembourg securitisation companies shall file their audited annual accounts to the Register of Commerce in Luxembourg.





Tax

Tax neutrality is one of the key advantages and success factor of the securitisation transactions.

For securitisation funds: SeVs are fully exempt from corporate income tax and municipal business tax but also exempt from the subscription tax (“*taxe d’abonnement*”).

For securitisation companies:

- SeV will be subject to Luxembourg corporate income tax and municipal business tax which will permit to consider it as **Luxembourg tax resident and should benefit from Luxembourg’s tax treaty network** (64 DTT enforced and around 22 under negotiation) and from the EU Parent Subsidiary Directive. In certain cases, it could be useful to structure the cash flow in order to leave an arms’ length remuneration of the securitisation vehicle.
- However all **costs and commitments due to the SeV’s investors and creditors** (dividends, interest,...) are entirely considered as **tax deductible expenses** (since commitment to remunerate investors and creditors qualify as interest on debt even if paid as return on equity) for income tax purpose in accordance with the Securitisation Law. If properly structured, the SeV’s tax structure should be close to nihil.
- Securitisation companies are **subject to net worth tax** (*impôt sur la fortune*) in Luxembourg which should not be higher than the minimum tax payment required for financial entities (i.e. EUR 4,815 maximum per year).

Payments on the securities issued to the investors and the creditors will not be subject to withholding tax in Luxembourg but the tax treatment of the interests and/or dividends received by a foreign investor or creditor shall be analysed according to the tax rules of the country in which the creditor/investor is resident. Some jurisdictions as U.S. could lead to additional tax consideration which are not covered in this document and shall be carefully considered before structuring a securitisation vehicle.

VAT: management services provided to a securitisation vehicle are VAT exempt in Luxembourg.



AIFM consideration

Pursuant to the CSSF's FAQ on securitisation published on 23/10/2013 (subject to further developments or clarifications in EU legislation), securitisation vehicles should not fall within the AIFM law dated 12/07/2013 (the "**AIFM Law**").

Subject to a self-assessment to determine whether or not a SeV qualifies as AIF, the vast majority of securitisation vehicles should not be considered within the meaning of the AIF definition to the extent that the SeV securitises credit risks, issues only debt instruments, or is not managed in accordance with a defined investment policy.

However, a securitisation vehicle may qualify as an AIF within the meaning of AIFM Law under certain conditions. For example, undertakings having as a core business the securitisation of loans that they grant themselves, acting in their capacity of "first lender" would fall under the definition of AIF. Similarly, securitisation vehicles that issue structured products offering a synthetic exposure to assets other than loans (non-credit related assets) and whereby the credit risk transfer is only ancillary would also be considered as an AIF.

Should a securitization vehicle qualify as an AIF, additional requirements would need to be fulfilled that are more or less numerous depending on its supervision status. At a minimum, the securitisation AIF would need to appoint an alternative investment fund manager that shall be either registered or authorized subject to the value of the portfolio it manages.



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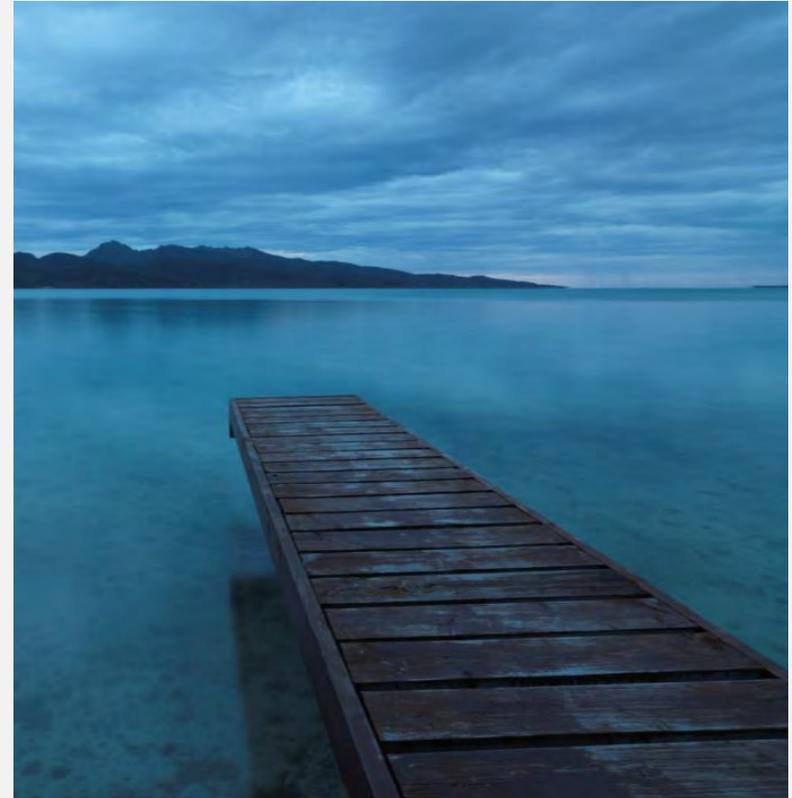
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Listing on the Luxembourg Stock Exchange

The securities issued by a Luxembourg securitisation vehicle or only by one specific compartment of a Luxembourg securitisation vehicle may be listed on the Luxembourg Stock Exchange, either on (i) the regulated market (within the meaning of MiFID), which falls within the EU harmonised regime (the Regulated Market) or (ii) the exchange regulated market, set up in 2005 as a multilateral trading facility within the meaning of MiFID which provides an alternative market to the Regulated Market (the Euro MTF).



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“Luxembourg is the second largest investment fund centre in the world after the United States, the premier captive reinsurance market in the European Union and the premier private banking centre in the Eurozone. The financial sector is the largest contributor to the Luxembourg economy. From its origins as a Euroloan centre, the city subsequently developed as a private banking centre and then, from the 1980s, as a leading domicile for investment funds. The success of the financial centre is founded on the social and political stability of the Grand Duchy and on a modern legal and regulatory framework that is continuously updated, inspired by regular consultation between the government, the legislator and the private sector. Thus, over the years, specific regulatory frameworks have been created for alternative investment funds, venture capital investment funds, international pension funds, specialised investment funds, captive reinsurance companies, covered bond issuing banks, securitisation vehicles and family wealth management companies. This legal framework, combined with Luxembourg’s openness to the world, has attracted banks, insurance companies, investment fund promoters and specialist service providers from all over the world. The Luxembourg financial centre is characterised by a strong culture of investor protection and rigorous anti money-laundering policies. Its specialist teams are multilingual and multicultural, with a long tradition of financial expertise and extensive knowledge of the needs of an international clientele.”

Source: www.luxembourgforfinance.lu

Our mission is built up around the **One Stop Shop concept**: a global player which is staying client focused from the inside out, providing tailored solutions with high level of expertise.

Our experienced team is dealing with:

- ✓ complex and common investment policies in the **alternative investment fund industry**,
- ✓ a challenging **corporate industry**,
- ✓ diversified **private client** requirements, and
- ✓ a new **financing sources** environment

in close relationship (fast and proactive) with our clients and in accordance with an increasing **regulated environment**.

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- ✓ A **specialized team** coming from the alternative investment fund and corporate industry with more than 20 years expertise in Europe.
- ✓ A truly **independent financial and corporate services provider** able to leverage on the existing expertise by providing a fully integrated solution.
- ✓ Our own offices and dedicated partners network are offering to deal with **cross border solutions** in several jurisdictions.



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LINKS



C.S.S.F. (Commission de Surveillance du Secteur Financier)

www.cssf.lu

Ordre des Experts-Comptables (Luxembourg)

www.oec.lu

Institut Luxembourgeois des Administrateurs

www.ila.lu

Luxembourg for Finance

www.luxembourgforfinance.lu

LPEA (Luxembourg Private Equity & Venture Capital Association)

www.lpea.lu

EVCA (European Private Equity & Venture Capital Association)

www.evca.eu

ALFI (Association of the Luxembourg Fund Industry)

www.alfi.lu



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