

KEY FACTS

FUND SERVICES – SECURITISATIONS

SECURITISATION IS THE PROCESS OF TAKING ASSETS THAT DELIVER A REVENUE STREAM, ALONG WITH THEIR ASSOCIATED RISKS, PACKAGING THEM IN A SPECIAL PURPOSE VEHICLE (SPV), AND THEN SELLING SECURITIES IN THE SPV TO INTERESTED INVESTORS WHO RECEIVE DIVIDENDS/INTEREST AND REPAYMENT OF THE PRINCIPAL AMOUNT ON AN AGREED DATE.

Securitisation is frequently used to monetise illiquid assets, lower funding costs or repackage financial assets, and to diversify risk.

LUXEMBOURG'S SECURITISATION FRAMEWORK

Luxembourg Securitisation Law offers promoters of securitisation structures two clear advantages:

Lower Costs

- > Luxembourg's existing civil law framework reduces the amount of specific drafting for offering documents, lowering legal fees, and making it cheaper to set up a securitisation vehicle than in many other jurisdictions.

A Comprehensive Legal Framework

- > Securitisation SPVs can be set up either as a company or as a fund.
- > Flexibility of compartmentalisation, i.e., the ability to create within a securitisation SPV an unlimited number of segregated compartments, each representing a separate part of the assets and liabilities of the securitisation vehicle. Such assets and liabilities are, by law, ring-fenced on a compartment-by-compartment basis, including in case of insolvency.
- > No regulation or supervision of securitisation SPVs by the financial regulator is required unless specific conditions are met.
- > The principles of bankruptcy remoteness apply through compartmentalisation (i.e., ring-fenced subdivisions of the securitisation SPV), limited recourse (i.e., the rights of the investors and creditors of the securitisation SPV or of its compartments are limited to the assets of such vehicle or compartments), non-petition (i.e., investors and creditors of a securitisation SPV cannot start insolvency proceedings for a certain period of time or as an absolute undertaking), and subordination rules with respect to the various financial instruments issued by a securitisation SPV.
- > Compartmentalisation, limited recourse, non-petition and subordination are expressly recognized by the Luxembourg Securitisation Law.
- > Both "true sale" and "synthetic" securitisation are possible.
- > The law enables tax transparency (for funds and tax-transparent companies) or tax neutrality (for tax-opaque companies).
- > Possibility to use partnership structures for securitization.
- > Robust investor protections are in place.

FEATURES OF A LUXEMBOURG SECURITISATION VEHICLE

- > It is possible to securitise a broad range of underlying tangible or intangible assets, ranging from mortgage-backed loans and other asset-backed receivables (including but not limited to consumer loans, credit card receivables, trade receivables, real estate, intellectual property rights, life insurance policies, commodities, and rental receipts from cars or yachts) to CDOs.
- > Active management of risks linked to debt securities, or debt financial instruments or claims (by the securitisation SPV or a third party) is allowed to the extent that the transactions are not financed by a public offering.

- > A broad range of financial instruments, such as shares, notes, warrants, options, payment instruments, structured or hybrid products, and all other instruments evidencing ownership rights, claim rights or securities can be issued by the securitisation SPVs to finance themselves.
- > Securitisation SPVs can also finance their activities and transactions through loans or any form of borrowing, whether on an exclusive basis or in addition to the issuance of financial instruments.
- > Issued financial instruments can be offered through private placement or through public offering (under conditions) and could be listed in Luxembourg or on another stock market.
- > The structure is subject to corporate tax if the securitisation SPV is set up as a tax-opaque company that benefits from the tax-neutral regime.
- > Dividends or interest paid to investors are in principle tax deductible and not subject to withholding taxes, thus achieving tax neutrality.
- > Opaque vehicles should be subject only to the minimum net wealth tax of EUR 4,815 per annum.
- > There is potential for access to double tax treaties.
- > Tax transparency is ensured if the securitisation SPV is set up as a fund, or is established in a tax-transparent corporate form. The SPV's income is allocated among the investors and taxed in their respective countries of residence.
- > In equity-financed compartments, annual accounts as well as allocation to legal reserves and decisions on distribution of profits and reserves, can be approved at the compartment level.
- > It is possible to grant security interests over securitised assets in favor of any party involved in the securitisation transaction, which may not necessarily be either direct creditors or investors.
- > It is possible to acquire, directly or indirectly, assets that are securitised as well as assets generating the cash flows that are securitised.

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