

Securitisation in Luxembourg

Since March 2004 Luxembourg legislation offers a legal framework for developing securitisation products. Its main characteristics are flexibility, investor protection and tax neutrality.

The law covers all types of securitisation transactions regardless of the type of asset classes.

Securitisation undertakings can be set up as a company or as a fund. Within each securitisation undertaking different fully segregated compartments can be created guaranteeing protection for the allocated assets, in a way similar to umbrella investment funds.

Securitisation companies are governed by Luxembourg company law whereas securitisation funds follow the legislation on investment funds.

The law sets out that securitisation undertakings, which issue securities to the public on a continuous basis, must be regulated and fall under the supervision of the regulatory authority for the financial sector (Commission de Surveillance du Secteur Financier, hereinafter the “CSSF”).

Securitisation companies

Securitisation companies may be set up as a public limited company (“société anonyme”), a corporate partnership limited by shares (“société en commandite par actions”), a private limited liability company (“société à responsabilité limitée”), or a cooperative company organized as a public limited company (“société coopérative organisée comme société anonyme”).

Securitisation funds

Securitisation funds are set up in a pure contractual form. They consist of one or more co-ownerships or one or more fiduciary estates. The management regulations of the fund shall expressly specify whether the fund is subject to co-ownership rules or to trust and fiduciary rules. Securitisation funds are managed by management companies.

Multiple compartments

The articles of incorporation of a securitisation company may authorise the board of directors to create one or more compartments, each compartment corresponding to a distinct part of its assets and liabilities.

Identically, a securitisation fund may consist of several compartments, each compartment corresponding to a distinct co-ownership or fiduciary estate.

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One of the main objectives of the law is to clearly segregate the assets located in each compartment from the other compartments of the same company or fund as regards investors' and creditors' rights. A compartment can therefore be liquidated without affecting the other compartments.

Management companies for funds

The management company is a commercial company whose object is to manage securitisation funds and, as the case may be, to act as fiduciary of funds consisting of one or more fiduciary properties.

The management company must perform its duty in an independent manner and shall draw up the management regulations for the securitisation fund. It acts on behalf of the securitisation fund and its investors. The creditors of the management company have no rights of recourse against the assets of the securitisation fund.

Issuing securities

The assets and risks of a securitisation undertaking may be financed by issuing securities (shares or bonds). The value and the return of such securities depend on the return and risk associated with the underlying assets or risks.

Securitised risks

Risks relating to the holding of assets, whether movable or immovable, tangible or intangible, as well as risks resulting from the obligations assumed by third parties or relating to all or part of the activities of third parties are eligible to be securitised. A securitisation undertaking may assume those risks by acquiring the assets, guaranteeing the obligations or by committing itself in any other way.

Regulated securitisation undertakings

If securitisation undertakings issue securities to the public on a continuous basis, they must be regulated by the CSSF. All other securitisation undertakings are unregulated.

The approval procedures and supervision by the CSSF are very similar to those applicable to other professionals of the financial sector and, in certain respects, to those regulating investment funds.

Regulated securitisation undertakings must, for example, entrust the custody of their liquid assets and securities to a credit institution established or having its registered office in Luxembourg.

Asset protection

The rights of the investors and creditors are limited to the assets of the securitisation undertaking. However, if such rights are related to a compartment or have arisen in connection with the creation, the operation or the liquidation of a specific compartment, the rights are limited to the sole assets of that compartment.

Fiduciary representatives

The law on securitisation provides for a new category of regulated entity, the fiduciary representative (représentant-fiduciaire), whose role can be compared to the role of a trustee ("security trustee"). Having the status of a professional of the financial sector, the fiduciary representative must apply for a license with the CSSF.

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The fiduciary representative must be set up in the form of a company with a share capital and own funds of no less than EUR 400.000. Its registered office must be located in Luxembourg.

The investors and certain creditors can entrust the safeguarding of their interests to a fiduciary representative. He has to be appointed by a special agreement in which all its powers of representation are defined. In general, as soon as a fiduciary representative is appointed, all individual rights of the represented investors and creditors are suspended. He can also be granted the power by the investors and creditors to act in their interest in a fiduciary capacity. In that respect, he can accept, take hold and exercise all sureties and guarantees and receive all payments to be made to the investors and the creditors.

Tax treatment

The securitisation law has been very successful in achieving complete tax neutrality.

As from 1 January 2009, capital contribution duty has been abolished. A fixed registration fee of EUR 75 is levied at the incorporation of companies.

Income tax

Securitisation undertakings organised as corporate entities are fully liable to corporate income tax and municipal business tax at an aggregate tax rate of 28.59%. According to the law, any commitments of a securitisation company owed to the investors and other creditors are fully tax deductible. In practice, this means that securitisation companies should not realise any taxable profits and hence should not actually pay income taxes as provided that commitments are taken to distribute any profit to the investors.

The securitisation companies should be considered as a tax resident corporation and should be entitled to the benefit of the tax treaties concluded by Luxembourg.

Securitisation undertakings organised as a fund are exempt from income tax similar to investment funds. But contrary to investment funds, no subscription tax (taxe d'abonnement) is due by the securitisation undertaking.

Liquidation

The liquidation of securitisation undertakings or compartments of whatever type does not trigger any taxes.

Withholding taxes

Dividend distributions and interest payments are exempt from withholding tax unless the possible application of a withholding tax under the EU savings directive.

Net wealth tax

Securitisation undertakings are exempt from net wealth tax.

Value added tax

Management services provided to a securitisation vehicle are exempt from VAT.

Registration Taxes

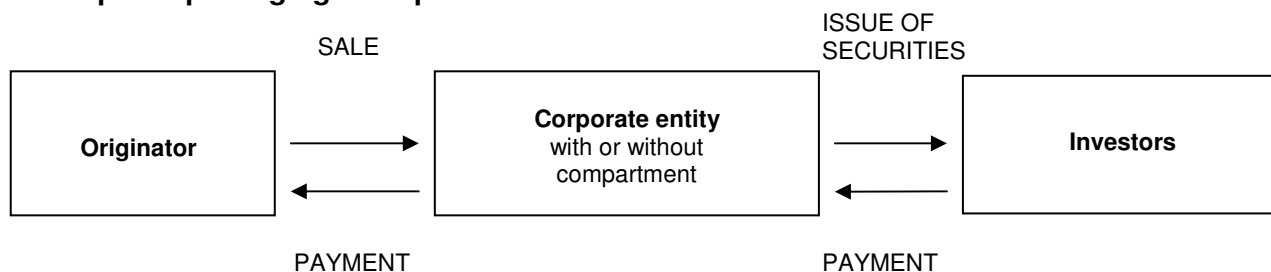
Any agreement executed in the context of a securitisation or any deed related thereto is exempt from the registration formality unless it relates to real estate situated in Luxembourg, aircraft or vessels recorded in a Luxembourg public register. In case of voluntary registration, such agreements and deeds will be subject to a fixed registration duty of EUR 12 plus EUR 2 for each page.

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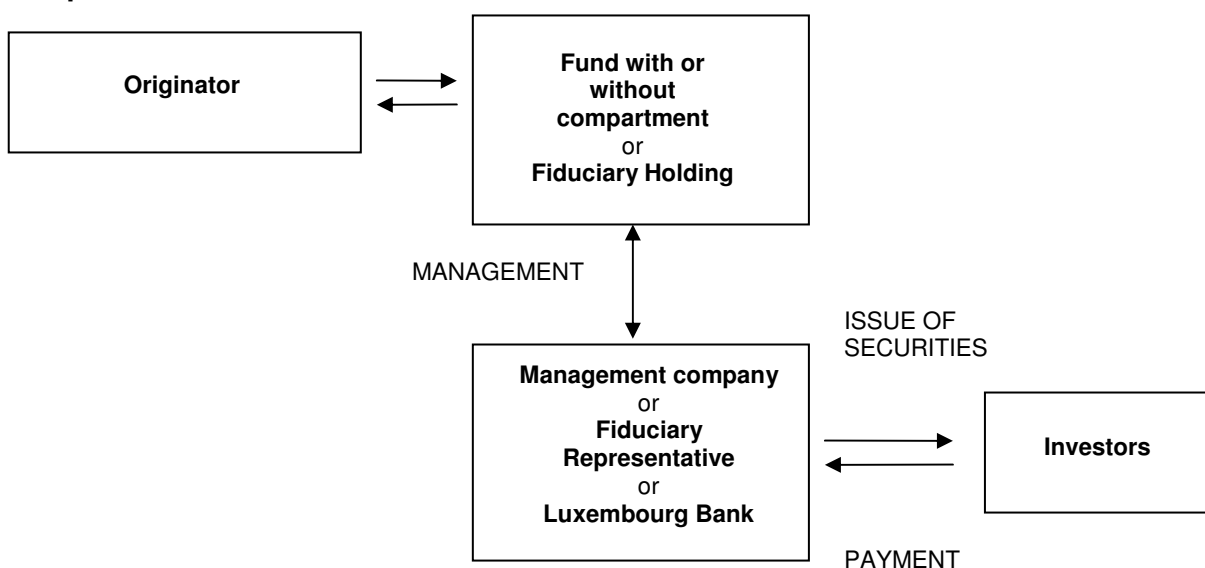
Conclusion

The extensive securitisation Law covers all possible types of securitisation as the two following diagrams illustrate.

1. Simple Repackaging example :



2. Complex Structure :



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The present memorandum represents a non exhaustive summary of the main features of the new law on securitisation. It does not take into account any particular situation and appropriate professional advice has to be taken before taking any action.