



Securitization

At a glance



Securitization has proved to be a refinancing and restructuring vehicle of choice in recent years. Deloitte can help you on the road ahead.

The way ahead

The European Commission, the European Central Bank and the Bank of England have taken a positive view and aim to restart the securitization market in the European Union. Deloitte can help you with the structuring, implementation and day-to-day administration of securitizations in Luxembourg.

Key points

The [law of 22 March 2004](#) ("The Law") lays the foundations for the securitization vehicles in Luxembourg¹. With a comprehensive and flexible legal, regulatory and fiscal framework, the Law encourages securitization business in Luxembourg and purports to facilitate capital market transactions and/or intra-group transactions as well as combination of both.

Securitization may also present untapped opportunities for banks and asset managers in search of a new business model. Securitization can be used by banks and asset managers to widen their product offerings to pension funds, insurance companies, sovereign wealth funds, other professional investors and High-Net-Worth individuals ("HNWIs"). In addition, securitization may provide solutions for sub or non-performing private equity and illiquid hedge funds investments, infrastructure, real-estate and shipping-related loans as well as foster a new financing and refinancing model for small and medium-sized enterprises ("SMEs").

With the securitization vehicles, Luxembourg aims at allowing for a high degree of flexibility when structuring a securitization transaction, ensuring tax neutrality of securitizations and a high level of investor protection with broad bankruptcy remoteness mechanisms.

Why Luxembourg is leading the way

Securitization is defined as a transaction under which the securitization vehicle, acquires or assumes, directly or through another vehicle, the risks:

- linked to assets or claims or obligations assumed by third parties (with predictable cash flows or rights to future income streams); or
- inherent to all or part of the activities of third parties.

The acquisition of such risks is financed by issuing transferable securities, the value or yield of which depends on such risks. Such risks are transferred from an originating company (the "Originator") to a "Special Purpose Vehicle" (the "SPV") which issues debt packages backed by the assets transferred.

Of a very wide scope, one of the principal advantages of

the Luxembourg securitization vehicle - as compared to other Luxembourg vehicles - is its flexibility, especially in terms of form of vehicle, legal framework, asset classes, and transactions:

- All kind of assets are eligible whether movable or immovable, tangible or intangible. The risk may also result from obligations assumed by third parties or inherent to the activities of third parties.
- The most commonly used form for a securitization vehicle is the public limited company- S.A. However other legal forms are available such as private limited company S.à r.l., partnership limited by shares - SCA or co-operative company organised as a public limited company.
- A securitization vehicle can also be set-up as a fund managed by a management company (located in Luxembourg) and governed by management regulations
- Form of securitization transactions:
 - True sale structures or synthetic structures
 - Single structures or dual structures (with separate acquisition and issuing vehicles)
- Regulation: only securitization vehicles issuing securities (equity or debt) on (i) on a continuous or revolving basis and (ii) to the public are subject to the supervision of the Luxembourg financial services supervisory authority ("CSSF"). Condition (i) and (ii) are cumulative.
- Unrestricted investors and no risk diversification required.

What else makes securitization in Luxembourg attractive to investors?

In order to create appropriate segregation of assets and liabilities, a Luxembourg securitization vehicle can create one or more compartments corresponding to a distinct part of the securitization vehicle's assets. Each compartment may issue notes against a single asset/claim or a portfolio of assets/claims. These segregated compartments do not contaminate each other in case of under or non-performance of the assets.

The rights of recourse of the investors and creditors are limited to the assets of the relevant compartment (subject to terms and conditions of the offering documents).

The Law confirms the bankruptcy remoteness mechanisms (limited recourse and non-petition clauses) to separate the securitised assets from insolvency risks.

¹ On 23 October 2013, the Luxembourg supervisory authority ("CSSF") issued [Frequently Asked Questions \("FAQs"\)](#) on securitization

Luxembourg securitization vehicles can be utilized in the context of strategic organizations of financing and refinancing activities without untying long-standing relationships between banks and borrowers.

Tax treatment

Securitization companies are fully subject to Luxembourg corporate income tax and municipal business tax. Payments and commitments made to investors and to other creditors are however fully deductible. The Law expressly states that - for tax purposes - payments made by such companies are always treated as interest, even when made under the form of dividend, leading to a significant reduction of their taxable basis. No withholding tax is due on these payments. As from 1 January 2016, securitization companies should be subject to a minimum net worth tax ranging from EUR 535 to EUR 32,100 per year (depending on the assets held). They are otherwise not subject to net worth tax.

Securitization companies, as fully taxable resident companies, have in principle access to double tax treaties concluded by Luxembourg with other countries as well as to EU directives. Upon request, they can obtain a tax residence certificate from the Luxembourg tax authorities.

Securitization **funds** are assimilated to investment funds transparent for Luxembourg tax purposes. They are not subject to corporate taxes, net wealth tax and have in principle no access to European directives or double tax treaties. Investors are taxed according to the rules applicable in their country of residence. No subscription tax is due by securitization funds.

As long as they do not have the effect to transfer rights related to immovable property located in Luxembourg or to aircraft, ships or riverboats recorded on a public register in Luxembourg, agreements entered into in the context of a securitization transaction and all other instruments relating to such transaction should not be subject to registration formalities, even when referred to in a public deed or produced in court or before any other public authority.

Finally, one of the most attractive tax aspects of the securitization vehicle is the VAT exemption from which the latter may benefit with respect to management services.

How Deloitte can help you

Deloitte is proud to offer a centralized securitization team and state of the art technology to assist with the initial structuring and regulatory, tax and accounting set-up as well as the daily administration of securitization structures, their investment portfolios and issued financial instruments.

Pre-securitization assistance

Deloitte's pre-securitization advisory services help to prepare asset portfolios for the securitization process by

- Focusing on the objectives, needs and requirements of the originator, sponsor and potential investors
- Providing modeling & scenario analysis and coordinating with rating agencies
- Ensuring completeness of the loan files and documents
- Pre-listing services

Securitization implementation assistance

During the second stage, Deloitte can assist with:

- **Deal structuring:**
 - Formulating a consensual and comprehensive asset restructuring plan
 - Assisting and coordinating legal advisors in drafting legal documentation
 - Preparing financial forecasts
- **Set up of the securitization vehicle**
- **Setup of the vehicle:**
 - Confirmation of the tax treatment applicable to the Luxembourg vehicle (e.g. access to double tax treaties)
 - Coordination with external service providers
- **Asset and collateral valuation**
- **Listing and implementation assistance:**
 - Review of (any potential) comments on the prospectus and resubmission to the Luxembourg Stock Exchange
 - Submission to clearing house of the prospectus approved by the Luxembourg Stock Exchange
 - Submission of listing application package to Luxembourg Stock Exchange

Post securitization assistance

Following the securitization, Deloitte can provide an all-encompassing portfolio monitoring including:

- **Loan servicing and monitoring:**
 - Assisting with evaluation and monitoring of collateral maintenance covenants in loan agreements
 - Solvas|Portfolio™ and customised risk management tools (incl. meeting the requirements of IFRS 9)
 - Enforcement option analysis and step plans for share/asset pledges

- Assisting in the monitoring of investment criteria and restrictions (e.g. for collateralized loan obligations (CLOs))
- Modeling and assisting in the monitoring of interest cash flows as well as scheduled and unscheduled distributions/redemptions related to the issued financial instruments
- Modeling and assisting with the monitoring of currency and interest hedging
- **Accounting, financial and tax reporting:**
 - Accounting services for entities in multiple locations
 - Multi-GAAP (Lux GAAP, IFRS, US GAAP etc.)
 - accounting, financial statement compilation and consolidation
 - Support in the external financial reporting process
 - Identification and analysis of proposed and or newly implemented accounting principles
 - Continuous tax-efficient planning and structuring; identification and selection of appropriate Luxembourg and foreign investment structures
 - Cross border tax compilation and reporting
 - VAT analysis and reporting
 - Statutory annual audit
- **Risk management and modeling:**
 - Basel III, CRR/CRD IV, Solvency II
 - IFRS 9
 - Measurement and management of financial risks (market, operational, credit, liquidity, etc.)
 - Quantitative evaluation and management of portfolio risks
 - ICAAP and Economic Capital Calculation
 - Capital adequacy, regulatory reporting and compliance for financial institutions
 - Development of Value-at-Risk models and back testing Value-at-Risk models. Assistance in the validation of risk models and their technical capabilities and functionalities.

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Please also visit our dedicated [securitization webpage](#) for industry updates, hot topics and upcoming events

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