

## Regulatory News Alert

### Luxembourg amends the securitization law

24 June 2021

#### Scope

On 21 May 2021, the Chambre des Députés of Luxembourg published [Bill no. 7825](#) (the Bill) amending the Law of 22 March 2004 on securitization (the Law). This update aims to offer new possibilities for operators wishing to carry out securitization transactions under Luxembourg law, by providing clear, flexible and legally certain conditions while ensuring investors' effective protection.

The Bill's purpose is to implement Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937.

As part of the strengthening of the Capital Markets Union (CMU), Regulation (EU) 2020/1503 aims to facilitate access—in particular for small and medium-sized enterprises and growing start-ups—to alternative forms of financing, and to broaden investment opportunities for investors in a more secure framework.

#### Objectives

The Bill aims to:

- (i) Clarify how a securitization undertaking may finance itself;
- (ii) Allow securitization undertakings to issue within a more flexible framework to actively manage their assets within the limits set by the Law;
- (iii) Specify certain rules regarding compartmentalization; and
- (iv) Require securitization funds to register with the Trade and Companies Registry (RCS).

Moreover, the Bill appoints the Commission de Surveillance du Secteur Financier (CSSF) as the Luxembourg competent authority with the supervisory, investigative and sanctioning powers to ensure compliance with Regulation (EU) 2020/1503.

## Main amendments

1. **Financing flexibility:**
  - Securitization undertakings can have recourse, in addition to the issuance of any type of financial instrument, in whole or in part, to the **conclusion of other forms of financing**, such as liquidity facilities or permanent financing of any type; and
  - Securitization undertakings have the flexibility to finance themselves by taking out **loans**, whose yield or repayable principal depends on the risks acquired.
2. **Replacement of the term “securities”:** the Law refers to the notion of **"securities"** to define the means of financing a securitization undertaking. The Bill clarifies that a securitization undertaking may finance itself by **"financial instruments"**, as defined in Article 1, point 8, of the amended law of 5 August 2005.
3. **Alternative corporate forms:** securitization undertakings incorporated as securitization companies can be incorporated as general partnerships, limited partnerships, special partnerships and simplified joint-stock companies.
4. **More flexibility in collateral creation:** a securitization undertaking may grant security interests or guarantees over its assets solely to cover liabilities into which it has entered to effect their securitization, or for the benefit of investors in the securitization transaction concerned.
5. **Registration requirement:** Article 25 of the Bill introduces a legal obligation for securitization vehicles (the instrument) to **register** with the **RCS** in an identical format to the registration of mutual funds.
6. **Active management:** active management of certain securitized assets is possible for a basket of risks, made up of debt securities, financial debt instruments or receivables, and is reserved **only for securitization undertakings that do not finance themselves by issuing to the public**.
7. **Potential investors:** the Bill allows **retail investors to accept crowdfunding offers** and defines an emission of financial instruments as “an emission offered to the public, within the meaning of this law: (i) which is not intended for professional clients within the meaning of Article 1, point 5, of the law of 5 April 1993 on the financial sector, as amended; (ii) the denominations of which are lower than EUR100,000; and (iii) which is not distributed in the form of a private placement”.
8. **Compartmentalization: segregation of assets** can also be replicated/mirrored in the securitization company’s accounting. In securitization companies where such an arrangement is possible, certain decisions, such as profit distribution, should be taken at the compartment level. These clarifications are intended to protect investors in one compartment from contamination by other compartments.

## What is next?

The Bill needs to be approved by the Parliament of Luxembourg.

## What is in it for me?

Banks and issuers will need to adapt to the new rules introduced by Regulation (EU) 2020/1503 and, therefore, incur costs that are difficult to quantify ex-ante.

## How can Deloitte help?

Deloitte securitisation team can help you structure and prepare new issuances as well as perform optimisation analysis, help on assessment of securitised position both for clients and treasury management.

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# Your contacts

## *Subject matter specialists*

**Ekaterina Volotovskaya**  
Partner – Audi & Banking  
Tel: +352 45145 2387  
[evolotovskaya@deloitte.lu](mailto:evolotovskaya@deloitte.lu)

**Laurent Collet**  
Partner – Consulting Banking,  
Insurance and non-FSI  
Tel : +352 45145 2112  
[lacollet@deloitte.lu](mailto:lacollet@deloitte.lu)

**Patrick Laurent**  
Partner – Firm Innovation Leader  
Tel : +352 45145 4170  
[pal Laurent@deloitte.lu](mailto:pal Laurent@deloitte.lu)

**Pascal Martino**  
Partner – Banking Leader  
Tel : +352 45145 2119  
[pamartino@deloitte.lu](mailto:pamartino@deloitte.lu)

## *Regulatory Watch Kaleidoscope service*

**Simon Ramos**  
Partner – Investment Management  
Advisory & Consulting Leader  
Tel : +352 45145 2702  
[siramos@deloitte.lu](mailto:siramos@deloitte.lu)

**Benoit Sauvage**  
Director – Risk Advisory  
Tel : +352 45145 4220  
[bsauvage@deloitte.lu](mailto:bsauvage@deloitte.lu)

**Jean-Philippe Peters**  
Partner – Risk Advisory  
Tel : +352 45145 2276  
[jppeters@deloitte.lu](mailto:jppeters@deloitte.lu)

**Marijana Vuksic**  
Senior Manager – Risk Advisory  
Tel : +352 45145 2311  
[mvuksic@deloitte.lu](mailto:mvuksic@deloitte.lu)

Deloitte Luxembourg  
20 Boulevard de Kockelscheuer  
L-1821 Luxembourg  
Grand Duchy of Luxembourg  
  
Tel: +352 451 451  
Fax: +352 451 452 401  
[www.deloitte.lu](http://www.deloitte.lu)

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