

Regulatory News Alert

Luxembourg moves ahead with its updated Securitization Law

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On 9 February 2022, the Luxembourg parliament has approved a new law amending the Law of 22 March 2004, which will enter into force after publication in the Official Journal (the **Law**). The updated Securitization Law aims to:

- Facilitate access—especially for small- and medium-sized enterprises and growing start-ups—to alternative (capital markets based) forms of financing, through implementing the European Crowdfunding Regulation (EU) 2020/1503; and
- Broaden investment opportunities for investors in a more secure framework, by adapting the legal framework to the securitization market's current needs.

The result is a clear, flexible, and modern securitization framework that can accommodate (i) different financing sources and (ii) more variety in active management of assets, greatly benefiting the implementation of collateral debt and loan obligation (CDO/CLO) structures in Luxembourg.

Changes introduced

The updated Securitization Law introduces several changes, which are key, in light of their potential impact on the Luxembourg securitization market:

- **Additional sources of financing allowed.** The Law replaces the former “valeurs mobilières” (securities) with “instruments financiers” (financial instruments). This aligns the Securitization Law with the EU’s definition of transferable securities as per MiFID¹: The Law allows securitization vehicles to access multiple financing sources and to support a wider range of instruments.
- **Active management of assets** (by the vehicle of a third party). Active management of a pool of securitized risk is allowed if (i) the pool of securitized risks is made up of debt securities, claims or debt financial instruments; and (ii) the securitization vehicle is not financed by issues to the public. This change confirms Luxembourg can and will offer an appropriate and efficient legal framework to set up actively managed CDO/CLOs.
- **Additional legal forms are possible.** In addition to the current legal forms of securitization vehicles, the Law also allows the use of simple or special limited partnerships, general corporate partnerships, and simplified joint-stock companies.
- **Clarification of public issuance on a continuous basis.** The Law now contains a clear legal framework for an issuance to be considered to the public on a continuous basis. As such, an issuance must occur more than three times per financial year, be—

¹ The Markets in Financial Instruments Directive.

cumulatively—intended for non-professional customers, have denominations of less than EUR 100,000 and not be distributed in the form of a private placement.

- **Holding of securitized assets.** The Law clarifies that a securitization vehicle may acquire, directly or indirectly, the assets that it securitizes and the assets generating the cash flows that are securitized.
- **Increased flexibility for constituting security interests or guarantees.** The Law increases flexibility by allowing securitization vehicles to grant security interests to secure any obligation relating to the securitization transaction.
- **Registration of securitization funds.** Going forward, securitization funds will need to be registered with the Luxembourg business registry. Some existing securitized funds will need to undertake this registration if they have not yet done so.

Next steps

Once the Law takes effect, securitization funds will need to register with the Luxembourg business registry 6 months after the Law enters into force, if they have not yet done so.

All current securitization structures should review their structure to:

- Ensure compliance with the new Law; and
- Check whether it could be optimized from a legal, financing, tax or asset point of view.

How Deloitte can help

The Deloitte securitization team—specializing in regulatory, capital markets, legal and tax—can guide you through the changes of the updated securitization framework, help you perform an optimization analysis of your structure and, where needed or preferred, implement the necessary optimizations to your structure.

Your Contacts

Subject matter specialists

Ekaterina Volotovskaya

Partner – Audit & Assurance

Tel: +352 45145 2387

evolotovskaya@deloitte.lu

Anar Heydarov

Director – Audit & Assurance

Tel: +352 45145 3353

anheydarov@deloitte.lu

Regulatory Watch Kaleidoscope service

Jean-Philippe Peters

Partner – Risk Advisory

Tel: +352 45145 2276

jppeters@deloitte.lu

Benoit Sauvage

Director – Risk Advisory

Tel: +352 45145 4220

bsauvage@deloitte.lu

Marijana Vuksic

Senior Manager – Risk Advisory

Tel: +352 45145 2311

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

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