



Securitisation in Luxembourg

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A Securitisation Vehicle (SV) assumes either directly or indirectly, present or future risks relating to claims, assets, or obligations assumed by third parties and issues securities. The value or yield of these securities is tied to the performance of the underlying portfolio of assets.

On 22 March 2004, the Luxembourg law on securitisation modernised the statutory framework for securitisation and structured finance transactions in the country. While Luxembourg has long been regarded as a stable, investor-friendly environment, this legislation further enhanced the attractiveness of the region for securitisation and structured finance transactions by providing a broad definition of securitisation and allowing for a high degree of structuring flexibility. Since the introduction of the legislation, there has been continued steady growth in the market with over 1,000 SVs established in Luxembourg to date.

In May 2021, the Luxembourg Minister of Finance submitted draft law No. 7825 (Draft Law) to parliament. The Draft Law, if adopted in its current format, will build on existing securitisation legislation and continue to expand on legal certainty and flexibility.

Securitisable Assets

- Shares
- Loans (commercial loans, mortgages, credit card receivables, trade receivables)
- Commercial papers
- Consumer credits
- NPLs
- Commodities
- Income from operating businesses
- Bonds
- Risks relating to all types of assets
- Property, both tangible and intangible
- Risks resulting from the obligations assumed by their parties or relating to all or part of the activities of third parties
- Life assurance policies
- Equity investments
- Any other type of asset with a real value or future income.

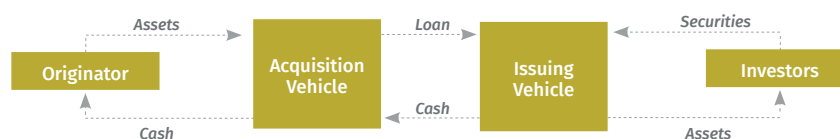
Types of SV Structures

Securitisation may be carried out by a single-tier structure or a two-tier structure with separate entities established for acquisition of assets and the issuance of securities.

Single Tier Structure



Two Tier Structure



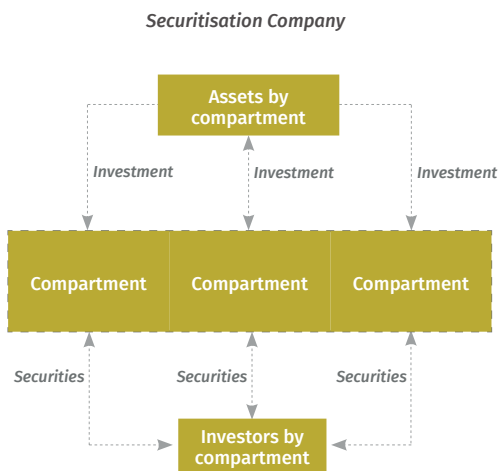
Within a two-tier structure, acquisition vehicles may be established in the country of the originator or where the assets are located, which may offer a number of tax, legal and operational advantages.

Securitisation Company	Securitisation Fund
<p>Can take the form of a</p> <ul style="list-style-type: none"> • public limited company (société anonyme) (SA) • private limited company (société à responsabilité limitée) (S.à r.l.) • a partnership limited by shares (société en comandite par actions) (SCA); or • cooperative organised in the form of a public limited liability company (société cooperative organise as a société anonyme) (SCOOP). <p>Most Luxembourg SVs are structured as companies with S.A and S.à r.l. the most commonly utilised structures. The minimum share capital for an S.A. is €30,000 and €12,000 for a S.à r.l.</p> <p>Fully taxable but benefit from a specific tax regime meaning they may have a taxable basis close to nil.</p> <p>Will be subject to the same applicable legislation as other commercial companies and benefit from Luxembourg's network of double tax treaties.</p>	<p>Co-ownership of assets.</p> <p>Does not have a legal personality.</p> <p>Tax Transparent. Not subject to subscription tax. Management services are exempt from VAT.</p> <p>May be organised as one or several co-ownership funds or fiduciary estates, subject to the legislation on trusts and fiduciary contracts.</p> <p>Represented by a management company with a registered office in Luxembourg.</p> <p>Minimum share capital requirements only apply to the management company.</p>

Company structures	SA	S.à r.l.	S.C.A	Scoop
Securities may be listed on a market	✓	✓	✓	✗
Securities may be offered to the public	✓	✗	✓	✗
Securities may be cleared in clearing systems	✓	✓	✓	✗
"Check the box" for U.S. tax purposes	✗	✓	✓	✗

Legal Framework

The Securitisation Law provides for an "opt-in" regime, meaning that only the entities that submit themselves to its provisions in their articles of association, management regulations or issuance documentation will benefit from the advantageous legal framework established by the Securitisation Law.



Compartments

SVs may be internally divided by the creation of ring-fenced compartments. Compartments are created by a simple decision of the management body of the SV but must be authorised in the SV's constitution.

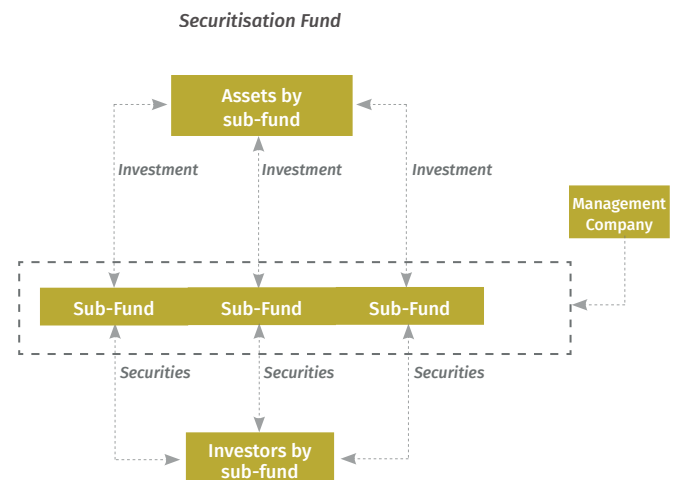
Each compartment is treated as a separate entity, corresponding to a distinct pool of assets, rules, and securities. Investors avoid the spill-over of risks and liabilities between compartments, while reducing the administrative costs and burdens relating to the set-up and management of separate entities. A compartment may be liquidated separate to the other compartments of the SV.

True Sale or Synthetic Securitisations

Securitisations may be structured either as a true sale or through a 'synthetic' securitisation.

True Sale: An SV acquires the legal and beneficial ownership of assets from the originator through the issuing of securities wherein the repayment is linked to the cash flows from the assets acquired.

Synthetic Securitisation: An SV acquires the risk associated with underlying assets in the form of derivatives or guarantees. The originator retains the legal and beneficial ownership of the assets. The amount payable by an SV to



the originator is typically calculated with reference to the value of the underlying assets.

Regulated vs. Unregulated Vehicles

In principle, Luxembourg SVs are not regulated or subject to any prior authorisation or regulatory supervision. They are also not required to comply with risk spreading, diversification requirements or debt/equity ratios. However, under certain conditions, SVs may become entities regulated by the Commission de Surveillance de Secteur Financier (CSSF), namely if:

- they issue securities to the public. This definition excludes securities issued to professional clients, private placement or with denominations equal to or exceeding €125,000. A stock exchange listing does not in itself qualify as a public offering; and
- they issue securities on a continuous basis. This threshold is set at three or more issuances per year. In the case of SVs with multiple compartments this is measured on a consolidated basis.

For SVs with a cross-border structure, where the acquisition vehicle is located in Luxembourg and the issuing vehicle is located outside of the country, there is no requirement for authorisation from the CSSF.



AIFM

In some cases SVs may, in addition to the regulation on securitisation, fall within the scope of Alternative Investment Fund Manager regime.

The Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers, as amended (the AIFMD) and the Luxembourg law of 12 July 2013 on alternative investment fund managers, as amended (the AIFM Law) provide for the exclusion of securitisation special purpose entities (SSPEs) from the regulatory regime. SSPEs are defined as entities whose sole purpose is to carry on a securitisation or securitisation within the meaning of the Regulation ECB/2013/40.

However, as the definition of securitisation within the European Central Bank regulation is not as broad as the Securitisation Law, some SV's may not qualify as SSPEs and therefore will fall within the scope of AIFMD.

For example, securitisation vehicles issuing CLOs are considered engaged in a securitisation transaction and not subject to AIFMD. However, entities whose primary function is the origination of new loans are not recognised as engaged in the transaction and thus fall within the scope of AIFM.

Irrespective of whether an SV qualifies as an SSPE, they will not fall within the scope of AIFMD if they:

- only issue debt instruments; or
- are not managed in accordance with a 'defined investment policy'.

If an SV qualifies as an Alternative Investment Fund, then it must be managed by an appointed Alternative Investment Fund Manager.

Financing

By law, SVs must be financed by the issue of securities (valeurs mobilières), although a legal definition of securities is not outlined.



Subject to the corporate form of the SV, securities may be issued in registered, dematerialised or bearer form. They may track a specific asset, pool of assets or compartment. SVs may issue different tranches of securities with a variety of yields and risk.

Registered Security	A security whose owner is kept on file with the issuer or a security whose transfer is restricted.
Dematerialised Security	A security with an electronic rather than physical stock certificate.
Bearer Security	A security that is owned by the bearer rather than the registered owner.

Generally, securities issued by SV's are debt securities, but shares issued by an SV, structured as a private limited liability company for example, also qualify as securities. Securities may be listed on the Luxembourg Stock Exchange, the Euro MTF or on foreign stock exchanges.



The CSSF takes the position that securities subject to foreign law which are recognised as securities either under applicable law or as per MiFID, are recognised as securities under Luxembourg law. Other financing options available for SVs include:

- Intra-Group Financing;
- Third Party Borrowing - Only on temporary basis such as for the acquisition of risks or assets to be securitised or for liquidity purposes;
- Leverage - Limited to the financing of the acquisition of assets; and
- Collateral and Guarantees - Only in order to secure claims from investors, claims arising from commitments for the purpose of securitising these assets or connected claims of acquisition and issuing vehicles.

Tax Regime

Securitisation Company

Securitisation companies are treated as fully taxable entities subject to Corporate Income Tax (CIT) and Municipal Business Tax (MBT) on their consolidated income. However, the taxable basis of a securitisation company is reduced by payments to security holders and as result, with careful structuring, their taxable income may be close to nil. Subject to certain conditions, payments to security holders are not subject to withholding tax. Securitisation companies are subject to a minimum annual Net Worth Tax (NWT) based on the composition and balance sheet.

Securitisation Fund

Securitisation funds are tax transparent vehicles, wherein the taxation of income generated occurs at the investor level rather than at the fund level. Securitisation Funds are not subject to CIT, MBT, minimum annual NWT or subscription tax. In principle, a securitisation fund should not be entitled to the benefits of treaties or European

Union Directives. Distributions by a securitisation fund are not subject to withholding tax.

VAT

SVs are treated as VAT-taxable entities. However, their activities benefit from a VAT-exemption. SVs are only required to register for VAT if they receive services from a foreign service provider.

Management services provided to an SV are exempt from VAT. Collateral management fees and investment advisory fees are also covered by this exemption, as long as the services provided are considered specific and essential to the management of the SV. Fees relating to subscription, underwriting and placement may also qualify for a VAT exemption.

Representation of Investor interests

Similar to the treatment of bondholders, one or several persons may be designated to represent the investors'/ creditors' collective interests in a securitisation transaction. Representation by an authorised fiduciary representative established in Luxembourg in charge of managing their assets is also permitted. It is possible to appoint a trustee governed by foreign law, to represent investors/creditors, once the terms of this representation are defined in the issuance documentation.

Bankruptcy Remote

Bankruptcy remote is a term used to describe an entity established to own and operate a specific transaction, while isolating financial risk and minimising risk of bankruptcy. There are a number of permitted tools which can be used in SVs to achieve a bankruptcy remote status. Most of these mechanisms are established by contractual arrangements between transaction parties. Such provisions may be outlined in the SV's issuance or constitutional documents.



SVs are typically structured to eliminate any corporate connection between the originator in order to avoid any potential consolidation with respect to bankruptcy, accounting or tax legislation. For this reason, SV shares would generally be held in an orphan vehicle.

Bankruptcy Tools	
Non seizure of assets	Investors and creditors waive their right to seize the assets of the SV.
Non petition clause	Investors and creditors waive their right to initiate any insolvency proceeding against the SV.
Subordinated clause	Investors and creditors subordinate their right of payment to the prior payment of other creditors or other investors.
Limited/Non-recourse clause	Investors and creditors limit their financial recourse against an SV to the amount of proceeds received by the vehicle from the related underlying assets. This right may be waived on a temporary basis.

Why Cafico International

Cafico International is an experienced, independent trust and corporate service provider for those seeking to do business in Ireland, Luxembourg and the UK. We specialise in offering effective turnkey solutions and minimising the management input required from our clients.

Established in 2012, since then we have grown to a compliment of 60 staff across three jurisdictions supporting over 300 clients across a range of industries. We are the corporate services provider of choice for public transactions that have listed debt on international stock exchanges with a cumulative nominal value in excess of \$40 billion.

Through our team of highly competent and experienced practitioners, Cafico International offers the full range of services

- Entity Incorporation
- Accounting and Financial Statements Preparation
- Domiciliation and Support Services
- Corporate Governance and Secretarial
- Regulatory Reporting
- Orphan Trust Services
- Tax Compliance
- Investor Reporting
- AIFMD Reporting
- EMIR Reporting
- BCL Statistical Central Bank Reporting
- Liquidation Services

Luxembourg has long been recognised as a very favourable environment for securitisation transactions. With the pending introduction of the Draft Bill to legislation, the regulatory framework will offer even greater flexibility for investors.

Cafico International has extensive experience working with the originators of securitised assets, financial institutions, investment managers, arrangers, trustees, collateral managers and regulators across a host of financial transaction types.

Rodney O'Rourke, Managing Director

How we can help

Our team in Luxembourg can assist with the incorporation of the General Partner, establishment of fund partnership vehicles and any holding entities within the structure. The Cafico International team, which seeks to act as an extension of your business, will work closely with lawyers, notaries, banks and other intermediaries to ensure the smooth process of the incorporation of your Luxembourg structure.

We will take ownership of all filings, accounting, financial statements preparation and tax compliance of each vehicle alongside any statistical and regulatory reporting (where required), working alongside you as a client, keeping you informed every step of the way.



Rodney O'Rourke

MANAGING DIRECTOR

T +353 1 905 8021

E rorourke@caficointernational.com



Alex Michael

SENIOR MANAGER

T +352 203 312 54

E amichael@caficointernational.com



Patrick Robinson

SENIOR MANAGER

T +352 661 452 244

E probinson@caficointernational.com

Cafico International Luxembourg
10, rue des Capucins
L-1313 Luxembourg

Tel: +352 27 86 28 37

www.caficointernational.com
infoLux@caficointernational.com

