Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Securitisation 2026

Definitive global law guides offering comparative analysis from top-ranked lawyers

Luxembourg: Law and Practice

Vassiliyan Zanev and Natalja Taillefer
Loyens & Loeff

LUXEMBOURG

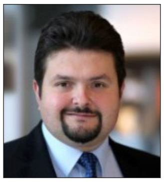
Law and Practice

Contributed by:
Vassiliyan Zanev and Natalja Taillefer
Loyens & Loeff

Contents

Loyens & Loeff has a securitisation practice in Luxembourg that handles the structuring, regulatory and tax aspects of structured finance and securitisation transactions, including true sale and synthetic securitisation deals, collateralised loan obligations (CLOs), commercial mortgage-backed securities (CMBS), inventory securitisations, securitisation platforms and issuances of asset-backed securities. It has an outstanding record of representing issuers, originators and investors (including financial institutions, investment funds and large corporates) and working on both traditional and innovative securitisations involving various asset classes (for example, the first Islamic finance sukuk securitisation of IP rights). The team is part of a fully integrated firm with home markets in the Benelux and Switzerland, and offices in all major financial centres, such as London, New York, Paris and Zurich.

Authors



Vassiliyan Zanev is a partner in the investment management group of Loyens & Loeff and he leads the firm's fund finance and securitisation practice in Luxembourg. He represents a variety of financial institutions, investment funds and corporations across a range of structured finance and lending transactions, with particular emphasis on securitisation, fund finance and real estate finance. Vassiliyan is a member of the EMEA Advisory Council of the Fund Finance Association.

Natalja Taillefer is a partner in the finance practice of the Luxembourg investment management team at Loyens & Loeff. She is a member of the Luxembourg Bar (List IV) and Estonian Bar and advises her clients in various banking and finance matters with an emphasis on securitisation and structured finance transactions. She has extensive experience in representing originators, issuers and investors (including financial institutions, investment funds and large corporates) in cross-border securitisations covering various classes of assets. Natalja offers regulatory expertise with regard to both domestic and European law securitisation issues. In particular, she is a member of the working group of the Luxembourg Capital Markets Association preparing the position paper in relation to the application of the EU Securitisation Regulation.

Loyens & Loeff

18-20, Rue Edward Steichen
L-2540
Luxembourg

Tel: +352 466 230
Fax: +352 466 234
Email: info@loyensloeff.lu
Web: www.loyensloeff.lu

LOYENS & LOEFF
Law & Tax

1. Specific Financial Asset Types

1.1 Common Financial Assets

Two Levels of Regulation

The type of assets that can be securitised in Luxembourg varies based the applicable legislation. Securitisation transactions in Luxembourg are governed by two layers of regulation. On the national level, the Luxembourg Law of 22 March 2004 on securitisation, as amended (the "Securitisation Law") is applicable on an opt-in basis (see **4.10 SPEs or Other Entities** for a definition of securitisation under the Securitisation Law). On a pan-European level, the EU Regulation (EU) 2017/2402 of 12 December 2017, as amended (the "Securitisation Regulation") (see **4.1 Specific Disclosure Laws or Regulations** with regard to the definition of securitisation under the Securitisation Regulation), aims to mandatorily capture the transactions satisfying certain conditions with the purpose of reducing macroeconomic risks relating to the securitisation.

While there may be an overlap between the Securitisation Law and the Securitisation Regulation, the definition of "securitisation" under the Securitisation Law is broader than the definition of "securitisation" used in the Securitisation Regulation and, hence, a vast number of transactions carried out by Luxembourg securitisation undertakings (the "SPEs") fall within the scope of the Securitisation Law, but not of the Securitisation Regulation.

Securitised Assets Under the Securitisation Law

The Securitisation Law does not, per se, limit the types of assets to be securitised, and the most commonly securitised assets are securities, loans, mortgages, NPLs, trade and lease receivables, interests in investment funds and structured products. Nevertheless, the passive management requirement under the Securitisation Law (please see **4.11 Activities Avoided by SPEs or Other Securitisation Entities**) may in practice have some practical implications for the types of securitised assets. Although most common assets to be securitised are intangible, securitisation of tangible assets (notably movable assets, inventory and commodities) is also acceptable, provided that the purpose of the transaction is to refinance those assets and to render them liquid.

Securitised Assets Under the Securitisation Regulation

The Securitisation Regulation is more restrictive with regard to the types of securitised assets and limits the securitisation transactions falling within its scope to credit risk only.

1.2 Structures Relating to Financial Assets

Luxembourg SPEs are generally adapted to securitisation of any type of financial assets and the structure of the transaction is mostly driven by investor preferences and not by the type of the securitised assets.

1.3 Applicable Laws and Regulations

The principal applicable laws and regulations that have a material effect on the structures referred to in **1.2 Structures Relating to Financial Assets** are the following:

- the Securitisation Law;
- the Securitisation Regulation;
- the Luxembourg Law of 5 August 2005 on financial collateral arrangements, as amended (the "Collateral Law");
- the Luxembourg Law of 10 August 1915 on commercial companies, as amended (the "Companies Law");
- the Law of 5 April 1993 relating to the financial sector, as amended (the "1993 Law");
- the Luxembourg Commercial Code;
- the Luxembourg Law of 7 August 2023 on business preservation and modernisation of bankruptcy law (the "Reorganisation Law");
- the Prospectus Regulation (EU) 2017/1129, as amended (the "Prospectus Regulation") and the Luxembourg Law of 16 July 2019 on prospectuses for securities (the "Prospectus Law");
- the Luxembourg Law of 16 July 2019 implementing, among others, the Securitisation Regulation, as amended (the "SR Law");
- the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, as amended (MiFID II);

- the Regulation (EU) No 648/2012 on over-the-counter derivatives, central counterparties and trade repositories, as amended (EMIR);
- the Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers, as amended (AIFMD) and the Luxembourg Law of 12 July 2013 on alternative investment fund managers transposing the AIFMD, as amended (the "AIFM Law");
- the Luxembourg Law of 27 July 2003 on trust and fiduciary contracts, as amended (the "Fiduciary Law");
- the EU Regulation (EC) 593/2008 on the law applicable to contractual obligations (the "Rome I Regulation");
- the EU Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (CRR), as amended in particular by Regulation (EU) 2024/1623 of the European Parliament and of the Council of 31 May 2024 (CRR III) and Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD), as amended in particular by Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 (CRD VI);
- the Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance, as amended (Solvency II) (recast); and
- the Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers (the "NPL Directive") and the Luxembourg Law of 15 July 2024 on the transfer of non-performing loans (the "NPL Law").

1.4 Special Purpose Entity (SPE) Jurisdiction

Luxembourg remains one of the most popular jurisdictions of establishment for SPEs (by the number of SPEs) in the world. The main factors contributing to its success are its detailed yet flexible legal framework that accounts for the practical needs of the investors and SPEs and provides a wide array of efficient structuring tools and eligible assets, but also its stable political and economic environment, high degree of legal certainty, as well as access to savvy services providers.

1.5 Material Forms of Credit Enhancement

Third-party guarantees, letters of credit, reserve funds and over-collateralisation are standard credit enhancement tools. Often, the financial instruments issued by the securitisation undertaking are split into several tranches carrying different risk and return profiles.

2. Roles and Responsibilities of the Parties

2.1 Issuers

The issuer is a bankruptcy-remote SPE under the Securitisation Law acquiring the securitised risk and transferring it to the investors, mainly through the issuance of debt financial instruments. Most SPEs in Luxembourg are unregulated.

2.2 Sponsors

The sponsor is the originator or other entity initiating and co-ordinating the securitisation process. For any securitisations falling within the scope of the Securitisation Regulation, a sponsor needs to be a credit institution or an investment firm.

2.3 Originators/Sellers

The originator/seller is an entity that has originated or was otherwise involved in the original agreement giving rise to the exposures being securitised or, alternatively, buys the relevant exposures on the secondary market with the intention to subsequently securitise them. Depending on the type of the securitised assets, the originator can be a credit institution, a trading undertaking, a manufacturer, an insurance company, etc. The originator/seller then transfers the assets or the economic interest pertaining to the assets to the SPE.

With regard to the securitisations falling within the scope of the Securitisation Regulation, an originator, the sponsor or the original lender of a securitisation (each as defined in the Securitisation Regulation) must comply with the risk-retention requirements as described in Article 6 of the Securitisation Regulation.

2.4 Underwriters and Placement Agents
The underwriter (often an investment bank) serves as an intermediary between the issuer and the investors in an offering. The underwriter analyses investor demand, provides guidance on structuring the transaction and underwrites the notes.

2.5 Servicers
The servicer is in charge of collecting and enforcing the securitised receivables. This role is often performed by the originator, but other specialised service providers may also be appointed.

Currently, the securitisation undertaking may, according to the Securitisation Law, entrust the assignor or a third party with the collection of claims it holds as well as with any other tasks relating to the management thereof, without such persons having to apply for an authorisation under the legislation on the financial sector.

Luxembourg credit servicers of non-performing loans that fall within the scope of the NPL Law (implementing the NPL Directive) need to obtain a licence from the Luxembourg Supervisory Commission of the Financial Sector (CSSF).

2.6 Investors
Investors acquire the financial instruments issued by the SPE. The largest investors are usually foreign pension funds, insurance companies, investment funds and commercial banks.

2.7 Bond/Note Trustees
The trustees usually act on behalf of the investors under the securitisation documentation and are responsible for monitoring cashflows, the compliance by the SPE and the other obligors with the contractual obligations and facilitate the communication between the parties. The form of the trustee appointment (trust or agency) and the scope of its rights and obligations are determined in the securitisation documentation, commonly subject to foreign law.

The Securitisation Law also allows the appointment of a Luxembourg fiduciary representative entrusted with the management of the SPE's investors' interests. The fiduciary representative may also be granted a power to act in the investors' interest in a fiduciary capacity, in which case the assets it acquires for the benefit of investors form a fiduciary estate separate from its own assets and liabilities.

2.8 Security Trustees/Agents
A security trustee/agent holds the collateral securing the SPE's obligations on behalf of the investors and, in the default scenario, is responsible for its enforcement.

The form of the security trustee appointment (trust or agency) and the scope of its rights and obligations are determined in the securitisation documentation, commonly subject to foreign law.

The Collateral Law allows the collateral to be provided in favour of a person acting for the account of the beneficiaries of the collateral, a fiduciary or a trustee, without a need for a parallel debt or similar structures.

3. Documentation

3.1 Bankruptcy-Remote Transfer of Financial Assets
The form of documentation, as well as its principle subject matters are generally determined in accordance with the law applicable to the transfer instrument. This law would normally be chosen depending on the jurisdiction where the securitised assets and, where applicable, the underlying debtors are located. Most securitisations in Luxembourg involve assets located abroad, and hence their content would be determined by the chosen law and the market practice of the relevant jurisdiction.

Where Luxembourg assets are involved, Luxembourg law requirements with regard to the transfer of the title and the perfection of such transfer (depending on the types of the assets) would normally be included, as well as the customary representations and covenants with regard to the status of the securitised assets, the underlying debtors, etc.

3.2 Principal Warranties
In practice, securitisation documents are rarely governed by Luxembourg law and the scope of the prin-

cipal warranties would thus be determined by the applicable foreign law and market practice. Standard warranties generally cover the status of the parties, the validity and enforceability of the documents, as well as warranties with regard to the securitised assets.

From the Luxembourg perspective, the following matters are usually subject to specific warranties:

- the securitisation undertaking being an unregulated securitisation undertaking within the meaning of the Securitisation Law (see **4.4 Periodic Reporting**);
- management of assets in compliance with the Securitisation Law;
- separate treatment of assets allocated to different compartments, if applicable;
- the securitisation undertaking not being subject to the AIFMD and the AIFM Law; and
- the central administration and the centre of main interests (COMI) of an SPE being in Luxembourg.

Additional representations may be required in a securitisation transaction subject to the Securitisation Regulation.

3.3 Principal Perfection Provisions

Luxembourg law will be applicable with regard to the perfection of the transfer of, or a security interest over, Luxembourg assets (see **6.3 Transfer of Financial Assets**).

3.4 Principal Covenants

In practice, securitisation documents are rarely governed by Luxembourg law and the scope of the principal covenants would thus be determined by the applicable foreign law and market practice. From the Luxembourg perspective, the matters referred to in **3.2 Principal Warranties** would normally also be subject to the relevant covenants.

3.5 Principal Servicing Provisions

In practice, servicing documents are rarely governed by Luxembourg law and the scope of the relevant servicing provisions would thus be determined by the applicable foreign law. Usually, the standard provisions relating to the collection, enforcement and administration of the securitised assets, information obligations, and servicing fees are expected.

It is notable that the Securitisation Law expressly provides that, in the case of any insolvency proceedings opened with regard to the servicer, the SPE may claim any sums collected by the servicer on its behalf prior to the opening of the bankruptcy proceedings without other creditors having any rights to such amounts. It is currently unclear how this provision would be treated in insolvency proceedings opened outside Luxembourg.

3.6 Principal Defaults

In practice, servicing documents are rarely governed by Luxembourg law and the scope of the relevant servicing provisions would thus be determined by the applicable foreign law. Usually, the standard provisions relating to the collection, enforcement and administration of the securitised assets, information obligations, and servicing fees are expected.

It is notable that the Securitisation Law expressly provides that, in the case of any insolvency proceedings opened with regard to the servicer, the SPE may claim any sums collected by the servicer on its behalf prior to the opening of the bankruptcy proceedings without other creditors having any rights to such amounts. It is currently unclear how this provision would be treated in insolvency proceedings opened outside Luxembourg.

3.7 Principal Indemnities

In practice, securitisation documents are rarely governed by Luxembourg law and the scope of the relevant indemnities provisions would thus be determined by the applicable foreign law and market practice.

3.8 Bonds/Notes/Securities

The acquisition of the securitised risks by a securitisation undertaking must generally be financed through the issuance of financial instruments (instruments financiers) or by contracting for the whole or part of any kind of loan, the value or yield of which is linked to such risks. Both debt and equity financial instruments can be issued for this purpose.

The financial instruments are as defined in the Collateral Law, which definition covers a broad range of instruments, whether they are in physical form, dematerialised, transferable by book-entry or delivery, bearer or registered, endorseable or not and regardless of their governing law.

Based on the above, the financing arrangements of an SPE may be documented either as securities (bond, notes) or as loans.

If governed by Luxembourg law, the terms and conditions of the financial instruments issued by an SPE would normally include the disbursement and repayment modalities, interest accrual provisions, representations and covenants, as well as standard limited recourse, non-petition and subordination provisions.

3.9 Derivatives

Investors may be using derivatives either to hedge risks (eg, interest rate or currency risks) or for investment purposes (eg, credit default swaps, total return swaps or credit linked notes).

3.10 Offering Memoranda

In Luxembourg, the securitisation undertaking offering its securities – or, where applicable, the entities distributing or placing such securities with investors – must ensure compliance with the restrictions deriving from the Prospectus Regulation and the Prospectus Law.

Pursuant to the Prospectus Regulation (and subject to the exemptions described below), no offer of debt securities may be made to the public in Luxembourg without the prior publication of a Prospectus Regulation-compliant prospectus duly approved by the CSSF or by the competent authority of another EU member state and passported to Luxembourg. Such prospectus needs to comply with the information requirements set out in the Prospectus Regulation and, in particular, in the Commission Delegated Regulation (EU) 2019/980 of 14 March 2019, as amended, including the relevant annexes.

The Prospectus Regulation provides that an offer of debt securities to the public is exempted from the obligation to publish a prospectus if, inter alia:

- the offer is addressed solely to qualified investors, as defined in the Prospectus Regulation;
- the offer is addressed to fewer than 150 natural or legal persons per member state, other than qualified investors;
- the offer is addressed to investors who acquire securities for a total consideration of at least EUR100,000 per investor, for each separate offer; or
- the offered securities have a denomination per unit of at least EUR100,000.

4. Laws and Regulations Specifically Relating to Securitisation

4.1 Specific Disclosure Laws or Regulations

Regarding transactions falling within the scope of the Securitisation Regulation, the latter imposes extensive transparency obligations on the originator, the sponsor and the securitisation special purpose entities (SSPEs, as defined in the Securitisation Regulation).

The Securitisation Regulation defines "securitisation" as a transaction or scheme whereby the credit risk associated with an exposure or a pool of exposures is tranched, having all of the following characteristics:

- payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures;
- the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme; and
- the transaction or scheme does not create exposures that possess all the characteristics listed in Article 147 (8) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

The Securitisation Regulation requires that the holders of a securitisation position, the competent authorities and the potential investors (upon request) are provided with, inter alia:

- regular information on underlying exposures;

- prior to pricing, all underlying documentation that is essential for the understanding of the transaction, with an indicative list of the documents included in the Securitisation Regulation;
- prior to pricing, in the absence of a prospectus, a transaction summary or overview of the main features of the securitisation;
- regular investor reports; and
- any inside information and the significant events.

The originator, sponsor and SSPE must designate among themselves a reporting entity.

The Commission Delegated Regulation (EU) 2020/1224 of 16 October 2019 and the Commission Implementing Regulation (EU) 2020/1225 of 29 October 2019 are applicable with regard to the detailed disclosure requirements under the Securitisation Regulation, including various templates for the provision of information.

The Commission Delegated Regulation (EU) 2020/1226 of 12 November 2019, as amended, and the Commission Implementing Regulation (EU) 2020/1227 of 12 November 2019, as amended, are similarly applicable for the provision of information in accordance with the STS notification requirements.

On 17 June 2025, the European Commission adopted a proposal for the amendment of the Securitisation Regulation (the "SR Proposal"). Among other things, the SR Proposal aims to reduce the burden in relation to the disclosure requirements by introducing simplified templates for private securitisations and, overall, cutting the number of mandatory data fields. Loan-level data will not be required for highly granular, short-term exposures (such as credit card receivables). At the same time, the definition of "public securitisation" is expected to be extended to certain transactions currently considered private, notably, where the relevant securitisation positions are admitted to trading on an EU regulated market, multilateral trading facility or organised trading facility, or where securitisations are marketed to investors on a "take-it-or-leave-it" basis. If the SR Proposal is adopted in its current form, all private securitisations will need to be reported to repositories.

4.2 General Disclosure Laws or Regulations

See **3.10 Offering Memoranda**.

4.3 Credit Risk Retention

Risk Retention

The Securitisation Regulation has replaced and consolidated risk-retention requirements formerly spread across various sectoral laws. Generally, the originator, sponsor or original lender in respect of a securitisation must retain, on an ongoing basis, a material net economic interest in the securitisation of not less than 5% of the nominal value of the concerned exposures or, in the case of non-performing exposures (NPEs), where a non-refundable purchase price discount has been agreed, of the sum of the net value of the securitised exposures that qualify as NPEs and, if applicable, the nominal value of any performing securitised exposures. In addition, in an NPE securitisation, the servicer is allowed to take on the risk-retention slice. The Securitisation Regulation also includes an exhaustive list of acceptable risk-retention techniques.

Where the originator, sponsor or original lender has not agreed who will retain the material net economic interest, the latter must be retained by the originator. For the purposes of the risk-retention provisions set out in the Securitisation Regulation, an entity shall not be considered to be an originator where it has been established or operates for the sole purpose of securitising exposures.

The regulatory technical standards specifying in greater detail the risk-retention requirements for originators, sponsors, original lenders, and servicers are included in the Commission Delegated Regulation (EU) 2023/2175 of 7 July 2023.

Institutional investors investing in securitisation positions are required in the course of their mandatory due diligence to verify whether these risk-retention formalities have been complied with.

The SR Proposal contains a waiver for the risk retention requirements, but only for very narrowly defined public sector sponsored securitisations.

Aside from the risk-retention regime established by the Securitisation Regulation, alternative investment funds (AIFs) that fall within the scope of the AIFMD and that originate loans will be subject to certain risk-retention formalities, once the Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directive 2011/61/EU (AIFMD 2.0) is implemented in Luxembourg. These risk-retention requirements will thus apply to the loans originated and subsequently transferred by an AIF, and that irrespective of whether the purchaser of such loan is an SSPE, within the meaning of the Securitisation Regulation. The draft Bill No 8628 aiming to implement AIFMD II in Luxembourg was submitted to Parliament on 3 October 2025.

Enforcement of the Securitisation Regulation

The CSSF and the Luxembourg Authority for the Insurance Sector (CAA) (the latter only with regard to the entities generally submitted to its supervision) are the competent authorities in Luxembourg to ensure compliance by the originators, original lenders and SSPEs established in Luxembourg with Articles 6 to 9 of the Securitisation Regulation (ie, risk retention, transparency requirements, ban on re-securitisation and criteria for credit-granting), as well as with the simple, transparent and standardised (STS) securitisations framework.

The penalties for non-compliance with the above risk-retention requirements are set out in the SR Law. Pursuant to the SR Law, the CSSF and the CAA may, within their respective competences, impose administrative sanctions in the event of an infringement (ranging from a public statement regarding the identity of the infringing person and the nature of the infringement to a monetary fine).

The CSSF and the CAA also enjoy certain investigative powers and may refer information to the State Prosecutor for criminal prosecution.

The SR Proposal also contains the direct sanctions for institutional investors that fail to comply with their due diligence requirements under the Securitisation Regulation.

4.4 Periodic Reporting

Statistical Reporting for All Securitisation Undertakings

All Luxembourg securitisation undertakings are subject to reporting obligations pursuant to Circular 2014/236 of the Luxembourg Central Bank (LCB) and Regulation (EU) No 1075/2013 of the European Central Bank (ECB) of 18 October 2013 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions, consisting of an initial registration obligation with the LCB, as well as ongoing reporting obligations (eg, liquidation or major changes in the information provided at the registration). Securitisation undertakings whose balance sheet exceeds certain thresholds will also need to comply with the periodic reporting obligations towards the LCB, including quarterly reports and monthly reports.

Pecuniary sanctions may be imposed on a defaulting SPE.

Reporting and Regulatory Requirements for Authorised Securitisation Undertakings

Securitisation undertakings subject to authorisation

Luxembourg SPEs issuing financial instruments to the public on a continuous basis must be authorised and supervised by the CSSF and must, among others, comply with certain reporting and regulatory requirements.

Financial instruments are deemed to be issued on a continuous basis if there are more than three issuances of financial instruments offered to the public during a financial year. For multi-compartments securitisation undertakings (see **6.2 SPEs**), this threshold is determined at the level of the securitisation undertaking on a consolidated basis, and not at the level of each compartment.

Public issuances are issuances of financial instruments:

- which are not intended for professional clients within the meaning of the 1993 Law (which corresponds to the definition of professional clients for MiFID II purposes);

- whose denominations are less than EUR100,000; and
- which are not distributed on a private placement basis.

Criminal sanctions and fines may apply in case an SPE issues financial instruments to the public on a continuous basis without having obtained a prior authorisation from the CSSF.

Reporting

Authorised securitisation undertakings are required, among other things, to present to the CSSF a copy of the issue documents, a copy of the financial and auditor reports, as well as any information on the change of a service provider, or the amendment of any substantial provisions of a contract (including the terms of the issued financial instruments).

Additionally, authorised securitisation undertakings must provide to the CSSF, on a semi-annual basis, a report summarising new securities issuances, other upcoming issuances and the issuances matured during the relevant reporting period.

Finally, a draft balance sheet and profit and loss account of the securitisation undertaking (where applicable, by compartment) is to be provided within 30 days of the financial year close.

In case of a breach, the CSSF may impose a monetary fine upon the directors, managers, officers and liquidators of authorised securitisation undertakings.

4.5 Activities of Rating Agencies

Rating agencies are regulated by Regulation (EC) No 1060/2009 of 16 September 2009 on credit rating agencies, as amended (the “CRA Regulation”). The CRA Regulation aims to address, among others, the over-reliance on credit ratings by financial institutions, which are now required to make their own credit risk assessment and may not mechanistically rely on credit ratings, potential conflicts of interest involving the credit agency or its relating persons, as well as various disclosure obligations of the rating agencies.

It is noteworthy that with regard to securitisation instruments (ie, financial instruments or other assets resulting from a securitisation transaction or scheme, as defined in the Securitisation Regulation), the CRA Regulation establishes a requirement of a double credit rating. It also provides that the issuer of the securitisation instrument must consider appointing at least one credit rating agency with no more than 10% of the total market share.

The CRA Regulation also sets out a number of requirements with regard to ratings on re-securitisations, notably a mandatory rotation of credit rating agencies issuing ratings on re-securitisations with underlying assets from the same issuer every four years.

ESMA is in charge of the supervision of credit rating agencies and may impose pecuniary penalties on infringing credit rating agencies. The CSSF and the CAA are the competent authorities in Luxembourg for the purposes of implementing the CRA Regulation and verifying compliance with the obligations arising from this regulation by the entities subject to their respective supervision.

4.6 Treatment of Securitisation in Financial Entities

The CRR and CRD set out a legal framework with regard to the prudential regulation of credit institutions and investment firms in the EU and provide, inter alia, for capital requirements (including capital adequacy calculation methodology), disclosure obligations and operational requirements for entities holding securitisation exposures.

The new banking package (CRR III/CRD VI) implements the outstanding elements of the Basel III regulatory reforms in the EU (ie, output floor, credit risk, market risk, operational risk). It also introduces changes in other non-Basel key areas such as fit-and-proper, third-country branches and environmental, social and governance (ESG) risks.

The introduction of the output floor could have a significant impact on the own-funds requirements for securitisation positions held by institutions using the Securitisation Internal Ratings Based Approach or the Internal Assessment Approach. Although such positions are generally small relative to other exposures, the introduction of the output floor could affect the economic viability of the securitisation operation because of an insufficient prudential benefit of the transfer of risk.

CRD VI must be transposed into national law by 10 January 2026 (a Luxembourg draft law No 8627 implementing inter alia CRD VI, was filed on 2 October 2025). In general, it will be applicable from 11 January 2026 apart from provisions on third-country branches applicable one year later, from 11 January 2027. CRR III will generally be applicable from 1 January 2025 (a Luxembourg draft law No 8427 implementing inter alia CRR III, was filed on 25 July 2024).

Solvency II is applicable with regard to solvency capital requirements pertaining to securitisation positions held by insurance and reinsurance undertakings.

Along with amendments contemplated under the SR Proposal, the European Commission also envisages the complementing changes to the CRR prudential framework that, if implemented, would result in a more beneficial treatment of securitisation exposures held by the credit institutions and would increase the attractiveness of such positions as a credit risk and capital management tool for banks in the European Union. Among other things, the introduction of resilient securitisation positions, adjustment of risk weight floors towards a more risk-sensitive approach and revisions of the p-factor are envisaged.

As most securitisation transactions in Luxembourg involve originators and investors located outside Luxembourg, local capital adequacy laws applicable to such originators and investors need to be considered.

4.7 Use of Derivatives

EMIR is directly applicable in Luxembourg and also applies to non-financial counterparties, which are very broadly defined. The CSSF confirmed in its press release 13/26 dated 24 June 2013, that securitisation undertakings are also covered, and may therefore be subject to EMIR obligations (notably clearing and reporting obligations).

EMIR has been implemented in Luxembourg by the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories, as amended, in respect of the sanctioning powers granted to the CSSF to guarantee the correct application of rules and requirements deriving from EMIR.

4.8 Investor Protection

The Securitisation Regulation and the Securitisation Law ensure a high degree of investor protection.

Aside from the stringent disclosure and reporting requirements (see **4.1 Specific Disclosure Laws or Regulations**), the Securitisation Regulation imposes a wide array of other requirements aiming to ensure adequate investor protection.

- The risk-retention rules (see **4.3 Credit Risk Retention**) aim to eliminate a potential conflict of interest by aligning the incentives of the originator with the incentives of an SSPE (and, ultimately, the investors).
- The credit-granting requirements imposed on the originators, sponsors and original lenders aim to ensure the quality of the securitised assets.
- Institutional investors are subject to rigorous due diligence requirements. In particular, the investors must, among others:
  - (a) verify the credit-granting criteria of the originator or original lender and their internal processes and systems, where such originator or lender is not a credit institution or an investment firm established in the European Union;
  - (b) verify that the originator, sponsor or original lender complies with the risk-retention and transparency requirements;
  - (c) carry out a due diligence assessment of the risk characteristics of the individual securitisation position and of the underlying exposures, etc; and
  - (d) have written procedures in place in order to monitor compliance with the above obligations and the performance of the investment and underlying exposures, and perform regular stress tests, etc.

If the SR Proposal is adopted in its current form, it is expected that the due diligence requirement will be amended to implement a more principle-based approach. For example, institutional investors will no longer have to verify that originators, sponsors or original lenders supervised by the competent authorities in the European Union are compliant with their obligations under the Securitisation Regulation, and lighter due diligence requirements will apply to investments in senior tranches. Investors in secondary market securitisations will be granted additional time to document their due diligence, in order to enable them to react more efficiently to business opportunities.

In Luxembourg, the Securitisation Law ensures the bankruptcy remoteness of a securitisation undertaking and legal certainty with regard to the standard contractual tools used in securitisation deals, such as non-petition, limited recourse and subordination provisions (see **6.2 SPEs** and **6.5 Bankruptcy-Remote SPE**).

Please see **4.4 Periodic Reporting** and **4.2 General Disclosure Laws or Regulations** in relation to additional reporting and disclosure rules in Luxembourg.

The Securitisation Regulation aims to protect retail investors by including certain restrictions with regard to the sale of securitised positions to retail clients, including a requirement to perform a suitability test in accordance with Article 25 (2) of MiFID II. Additionally, in the case of offerings made to retail investors, a key information document may need to be prepared, in accordance with Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products, as amended. Finally, MiFID II contains a number of requirements aiming to protect investors, including product governance, information and record-keeping.

4.9 Banks Securitising Financial Assets

See **4.6 Treatment of Securitisation in Financial Entities**.

Additionally, the Luxembourg Law of 8 December 2021, as amended, implementing the EU's Covered Bonds Directive (EU) 2019/2162 (the "Covered Bonds Law") regulates the issue of covered bonds (*lettres de gage*). Although the existing framework under the 1993 Law already provides for a special covered bonds regime for Luxembourg mortgage banks (*banques d'emission de lettres de gage*), the Covered Bonds Law also allows the issuance of covered bonds by the standard banks without requiring a specialised licence for this purpose.

Luxembourg banks (including mortgage banks) are supervised by the CSSF and are subject to certain activity restrictions and other requirements under the 1993 Law and the Covered Bonds Law, including a mandatory over-collateralisation ratio.

4.10 SPEs or Other Entities

Securitisation Criteria

In order to benefit from the regime under the Securitisation Law, it is necessary that:

- the Luxembourg securitisation undertaking (also referred to here as an SPE) submits itself to the provisions of the Securitisation Law in its articles of incorporation, management regulations or issue documents; and
- the transaction satisfies the substantive criteria of the securitisation set out in the Securitisation Law.

Regarding the second condition, the Securitisation Law defines a securitisation as a transaction by which a securitisation undertaking (i) acquires or assumes, directly or indirectly through another undertaking, risks relating to claims, other assets, or obligations assumed by third parties or inherent to all or part of the activities of third parties, and (ii) issues financial instruments or contracts for the whole or part of any kind of loan, the value or yield of which depends on such risks.

Despite this very broad definition, the CSSF clarifies in its guidelines on securitisation dated 23 October 2013 (the "Securitisation FAQ") that the main purpose of a securitisation transaction under the Securitisation Law must be an economic "transformation" of certain risks into securities and that the parties should comply with the legal definition of securitisation and the spirit of the law.

Legal Form

In Luxembourg, a securitisation undertaking governed by the Securitisation Law can be set up as a company or fund.

A securitisation company is subject to the general corporate framework under the Companies Law and can take the form of:

- a public limited company (*société anonyme*, or SA);
- a private limited company (*société à responsabilité limitée*, or Sàrl);
- a partnership limited by shares (*société en commandite par actions*, or SCA);
- a co-operative organised as a public limited company (*société cooperative organisée sous forme de société anonyme*);
- a general corporate partnership/unlimited company (*société en nom collectif*);
- a common limited partnership (*société en commandite simple* or SCS);
- a special limited partnership (*société en commandite spéciale* or SCSp); or
- a simplified company limited by shares (*société par action simplifiée*).

The possibility to establish a securitisation undertaking as an SCS or an SCSp provides for additional structuring opportunities for securitisation transactions, given the (in principle) tax-transparent nature of such partnerships.

A securitisation undertaking can also be set up as a fund (fonds de titrisation), managed by a Luxembourg-based management company (société de gestion) in accordance with its management regulations. A securitisation fund does not have legal personality and can be structured as (i) a co-ownership of assets or (ii) as a fiduciary arrangement where the assets are held by the management company acting as fiduciary for the account of the investors.

Securitisation funds and securitisation companies are required to be registered with the Luxembourg Register of Commerce and Companies (RCS).

Please also see **6.2 SPEs** for the compartmentalisation option of Luxembourg securitisation undertakings.

AIFMD

AIFMD and AIFM Law address the question of whether an SPE can be considered as an alternative investment fund (AIF).

Pursuant to the AIFMD and the AIFM Law, an SSPE does not constitute an AIF. However, the definition of an SSPE under the AIFMD is different from the definition of an SSPE under the Securitisation Regulation. SSPEs are defined in the AIFMD as entities whose sole purpose is to carry on a securitisation or securitisations within the meaning of Regulation ECB/2008/30 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions and other activities that are appropriate to accomplish that purpose. Regulation ECB/2008/30 has been repealed by Regulation ECB/2013/40.

According to the Securitisation FAQ (with reference to the guidance note on the definitions of "financial vehicle corporation" and "securitisation" under Regulation ECB/2008/30 issued by the ECB), securitisation undertakings issuing collateralised loan obligations are considered as being engaged in securitisation transactions and, as a result, are not subject to the AIFM Law. In contrast, entities that primarily act as "first" lenders (ie, originating new loans) are not considered as being engaged in securitisation transactions and will thus fall within the scope of the AIFM Law. The same applies to securitisation undertakings issuing structured products that primarily offer a synthetic exposure to assets other than loans (non-credit-related assets) and where the credit risk transfer is only ancillary.

Independently from their potential qualification as SSPEs (for the purpose of the AIFMD), securitisation undertakings that only issue debt instruments should not, according to the Securitisation FAQ, constitute AIFs for the purpose of the AIFM Law. Similarly, irrespective of whether securitisation undertakings qualify as SSPEs for the purpose of the AIFMD, it is the view of the CSSF that securitisation undertakings that are not managed in accordance with a "defined investment policy" (within the meaning of the AIFM Law) do not constitute AIFs.

4.11 Activities Avoided by SPEs or Other Securitisation Entities

Public Issuance of Financial Instruments

A securitisation undertaking issuing securities to the public on a continuous basis within the meaning of the Securitisation Law (see **4.4 Periodic Reporting**) will be subject to authorisation and prudential supervision by the CSSF.

Please see **4.10 SPEs or Other Entities** with regard to the application of the AIFMD and the AIFM Law to the securitisation undertakings.

Passive Management

While the Securitisation Law permits any kind of assets to be securitised, the nature of securitisation transactions requires that the securitised risks stem exclusively from the assets acquired or assumed by a securitisation undertaking in the course of the securitisation and not from any entrepreneurial or commercial activity of the securitisation undertaking. Thus, Luxembourg securitisation undertakings must generally have a passive attitude when managing their assets. This rule is not applicable to undertakings securitising debt securities, debt financial instruments and receivables, provided that the securitisation undertakings do not issue financial instruments to the public. The role of the securitisation undertakings investing in non-debt assets should be limited to the administration of financial flows linked to a securitisation transaction itself and to the "prudent-man" management of the securitised risks, and exclude all activities likely to qualify the securitisation undertaking as entrepreneur. Any management of such assets by the securitisation undertaking that creates increased risk in addition to the risk inherent thereto or which aims to create additional wealth or promote the commercial development of the securitisation undertaking's activities would be incompatible with the Securitisation Law, even if the actual management had been delegated to an external service provider.

Loan Origination

Loan origination by a Luxembourg SPE is in principle allowed. Structures originating loans instead of acquiring them on the secondary market may fall under the definition of securitisation, provided that the securitisation undertaking does not finance its loan origination activity from the funds raised from the public and that the issuance documentation either clearly defines the assets servicing the repayment of the loans originated by the SPE or clearly describes the borrowers and/or the borrower selection criteria, as well as information on characteristics of the loans granted.

Assignment of Assets and Granting of Security Interests

A securitisation undertaking cannot assign its assets, except in accordance with the provisions set forth in its constitutional or issuance documents. It may only grant security interests over its assets in order to secure the obligations that are related to the securitisation transaction.

4.12 Participation of Government-Sponsored Entities

Luxembourg is not known to participate in the securitisation market through government-sponsored entities.

4.13 Entities Investing in Securitisation

The vast majority of securitisation undertakings in Luxembourg are not regulated and, as a result, they usually target investors that are "professional clients" for the purposes of MiFID II, including credit institutions and investment funds.

In most cases, the investors in Luxembourg securitisation transactions are located abroad. Luxembourg does not impose any additional obligations in terms of such investors, but they must comply with their local rules and regulations (eg, diversification and capital adequacy rules).

Please see **4.8 Investor Protection** concerning the restrictions on the sale of securitisation positions to retail clients under the Securitisation Regulation.

Institutional investors (notably insurance and re-insurance undertakings, credit institutions and AIFMs that manage and/or market alternative investment funds in the European Union) investing in securitisation positions under the Securitisation Regulation are subject to mandatory due diligence requirements. Please see **4.8 Investor Protection** for more details.

4.14 Other Principal Laws and Regulations

There are no further details to add on any principal laws and regulations mentioned in **1.3 Applicable Laws and Regulations**.

5. Synthetic Securitisation

5.1 Synthetic Securitisation Regulation and Structure

Synthetic securitisation (where only the risk but not the title to the assets is transferred) is permitted in Luxembourg and is governed by the same legal framework as traditional securitisation; that is, mainly the Securitisation Law and the Securitisation Regulation. The Securitisation Regulation generally recognises synthetic securitisations, and such securitisations can, in principle, benefit from the STS label, provided they meet certain criteria (including relating to simplicity, transparency, standardisation etc).

Synthetic securitisations involving the use of derivatives may be subject to EMIR (see **4.7 Use of Derivatives**).

The Securitisation Law provides expressly that securitisation transactions falling within its scope do not constitute activities subject to the Luxembourg Law of 7 December 2015 on the insurance sector, as amended. For this reason, there is no risk in Luxembourg that certain synthetic securitisation structures would trigger the licensing requirements under the insurance legislation.

Synthetic securitisation structures in Luxembourg are usually set up with the involvement of an SPE, which would enter into a derivative contract or a guarantee with the counterparty. Similarly to a traditional securitisation, the securitisation undertaking would then issue financial instruments to the investors and use the proceeds of the issuance to fund its obligations under such derivative contract or a guarantee and to collateralise such obligations.

6. Structurally Embedded Laws of General Application

6.1 Insolvency Laws

Luxembourg SPEs are subject to the general insolvency regime set out in the Luxembourg Commercial Code. The main risk associated with insolvency proceedings initiated in Luxembourg is the claw-back of the assets transferred to the SPE in the course of the securitisation.

Regarding the qualification (and, consequently, potential recharacterisation) of the legal nature of the transfer of the securitised assets as a “true sale” or a secured loan, this is, in principle, determined in accordance with the laws applicable to the transfer instrument and the underlying assets. As, in practice, transfer documents and underlying assets are typically not governed by Luxembourg law, the qualification of the transfer as a true sale or a secured loan is most often a matter of foreign law.

Irrespective of the law applicable to the transfer, the Securitisation Law provides expressly that an SPE’s obligation to reassign the securitised claims back to the transferor included in the securitisation documents may not give basis for the requalification of the assignment and the risk that the assignment would be considered as a secured loan is thus limited as a matter of Luxembourg law.

Similarly, foreign law would usually also apply with regard to the grounds for the claw-back of the assets transferred to the SPE, as the originators and sellers in a securitisation transaction are normally located outside Luxembourg. Where Luxembourg law does apply, certain transactions entered into, or payments made, during the pre-bankruptcy hardening period (which is of a maximum of six months and ten days preceding the bankruptcy judgment, except in the case of fraud, where no time limit is applied) could be clawed back. For example:

- any transfer of assets made without consideration or for an inadequate consideration;
- any payment of debt that has not fallen due, as well as any payment of due debt if made by any

means other than in cash or by bill of exchange; and
- any other payment of due debt or any other act made by the insolvent company after it has ceased payments to its creditors (such cessation of payments being one of the bankruptcy criteria in Luxembourg), if the counterparty was aware of such cessation of payment.

The Securitisation Law excludes the claw-back risk in relation to security interests granted by the SPE no later than the time of issuance of the financial instruments or the conclusion of the agreements secured by such security interests, notwithstanding the security interests being extended to new assets or claims. The financial collateral arrangements falling with the scope of the Collateral Law are also exempted from the claw-back in Luxembourg.

The Securitisation Law seeks to mitigate the risk of bankruptcy by recognising standard non-petition, limited recourse and subordination provisions included in the documentation governing the securitisation transaction (please see **6.5 Bankruptcy-Remote SPE**) that are meant to exclude the occurrence of the bankruptcy proceedings in the first place.

On 1 November 2023, the new Reorganisation Law entered into force. It provides for a new legal framework allowing a Luxembourg debtor claiming that the continuity of its business is threatened (whether in the short or long run) to benefit from a set of tools and procedures that would enable it to preserve its business and avoid bankruptcy, including in-court and out-of-court reorganisation, and court-sanctioned stay of enforcement proceedings. The Reorganisation Law is applicable to securitisation companies and partnerships but not to the securitisation undertakings governed by the Securitisation Law that issue financial instruments to the public on a continuous basis. The Reorganisation Law is not applicable to the financial collateral arrangements under the Collateral Law and such arrangements, in principle, remain enforceable in accordance with their terms.

6.2 SPEs

Securitisation transactions in Luxembourg are usually structured to avoid a potential bankruptcy of the SPE. For this purpose, securitisation undertakings are normally set up under – and need to comply with – the Securitisation Law to be able to benefit from its protection.

Structurally, securitisation undertakings are normally set up to eliminate any corporate connection with the originator in order to avoid a potential consolidation for the purpose of any bankruptcy, accounting or tax laws. For this reason, shares in an SPE would generally be held by an orphan; for example, a Dutch foundation (*stichting*) or an Anglo-American charitable trust.

In Luxembourg, it is also possible to set up a compartmentalised SPE, as a result of which the estate of the SPE would effectively be segregated into different compartments, each representing a distinct part of the assets and liabilities of the securitisation undertaking, ring-fenced by law, including in the event of its bankruptcy.

Certain investors also require the appointment of an independent director on the board of the SPE.

The recourse rights of the creditors are, as a rule, limited to the assets of the SPE. Where such rights relate to a specific compartment, the recourse of the relevant creditors is then limited to the assets of that compartment.

6.3 Transfer of Financial Assets

The validity, enforceability and perfection of the transfer of financial assets are a matter of the applicable law determined pursuant to the Luxembourg conflict of law rules, which, in turn, depend on the types of assets being transferred.

Conflict of Law Rules

In regard to the assignment of, or security over, receivables, Article 14 of the Rome I Regulation provides that:

- the relationship between the assignor/security provider and the assignee/security taker is governed by the law applicable to the agreement between such parties; and
- the law governing the underlying claims determines (i) the question of whether that claim can

be assigned or made subject to a security interest, (ii) the relationship between the assignee/security taker and the debtor, (iii) the conditions under which the granting of an assignment of, or a security interest over, that claim can be enforced against the debtor, and (iv) the question of whether the debtor's obligations under that claim have been paid and discharged in full.

The Securitisation Law also contains certain conflict-of-law rules applicable in securitisations. In particular, and in line with Article 14 of the Rome I Regulation, the following matters are subject to the law governing the receivable:

- the transferrable nature of the receivable;
- the relationship between the transferee and debtor;
- the conditions of effectiveness of the transfer against the debtor; and
- the satisfactory nature of the payment made by the debtor.

While Article 14 of the Rome I Regulation does not provide for any conflict-of-law rules in relation to the enforceability of an assignment of receivables vis-à-vis third parties, the Securitisation Law states explicitly that it is the law of the location of the transferor that governs the effectiveness of the assignment towards third parties. This solution offered by the Securitisation Law is consistent with the approach adopted in the EU Commission proposal of 12 March 2018 for a regulation on the law applicable to the third-party effects of assignments of claims (the "Rome I Proposal"). According to the Rome I Proposal, the third-party effects of an assignment of receivables would be subject to the law of the country in which the assignor has its habitual residence.

Regarding assets other than receivables, the creation, perfection and enforcement of a security interest over, or transfer of, assets is governed by the law where such asset is located, notwithstanding the contractual choice of the parties.

In practice, the originators, sellers and securitised assets are prevailingly located abroad and thus the perfection of the transfer of (or the security interest over, as the case may be) such assets would not be governed by Luxembourg law.

Luxembourg Perfection Requirements

Where Luxembourg law applies, perfection requirements depend on the type of the relevant financial asset. Regarding the receivables, the assignment of an existing claim to or by an SPE becomes effective both between the parties and against third parties as from the moment the assignment is agreed on (unless agreed otherwise). While the assignment of a future claim is conditional on it coming into existence, as soon as the claim does come into existence, the assignment becomes effective between the parties and against third parties as from the moment the assignment is agreed on (unless agreed otherwise) despite the opening of bankruptcy proceedings or any other collective proceedings against the assignor, even if such proceedings are opened before the date on which the claim comes into existence.

The Securitisation Law does not require notification of the assigned debtor for the purpose of the perfection of the assignment. Nevertheless, the debtor can validly discharge its obligations to the transferor if it has not become aware of the transfer. A transfer of receivables entails a transfer of any related guarantees and/or security interests and its enforceability by operation of law against third parties, without any further formalities.

In the case of other assets, it is recommended to assess the relevant perfection requirements on a case-by-case basis, depending on the type of the asset.

As described in **6.1 Insolvency Laws**, the qualification of a transaction as a true sale or a secured loan would normally be subject to the laws governing the sale agreement (which is, in turn, generally chosen based on the location of the assets to be transferred). As the securitised assets are rarely located in Luxembourg, foreign law would usually be applicable to such determination.

Where Luxembourg law does apply, the court would normally look at the economic substance of the transaction and the intention of the parties, as determined based on the available evidence. Unfortunately, there is little to no case law in Luxembourg, which would set the precise criteria. The Securitisation Law provides expressly that an SPE's obligation to reassign the securitised claims back to the transferor included in the securitisation documents may not give basis for the requalification of the assignment and the risk that the assignment would be regarded as a secured loan is thus limited.

As the qualification of the sale agreement is rarely a matter of Luxembourg law, true sale opinions are uncommon in Luxembourg, and the practitioners would instead normally opine on the enforceability of the foreign-law judgments made with regard to such agreements.

6.4 Construction of Bankruptcy-Remote Transactions

A Luxembourg SPE governed by the Securitisation Law can also hold the securitised assets as a fiduciary for the investors, under the Fiduciary Law. A Luxembourg fiduciary arrangement (*fiducie*) results in a separate fiduciary estate distinct from the personal estate of the fiduciary (or other fiduciary estates held by such fiduciary) and the assets forming part of the fiduciary estate can be seized only by the creditors whose rights relate to such estate, including in the case of bankruptcy or liquidation of the fiduciary.

Given that bankruptcy remoteness is mostly a factual matter, Luxembourg opinions would normally be issued only with regard to the validity of the non-petition, limited recourse and subordination provisions.

6.5 Bankruptcy-Remote SPE

As mentioned in **6.2 SPEs**, securitisation undertakings need to be set up under – and need to comply with – the Securitisation Law to be able to benefit from its protection.

As bankruptcy remoteness is mostly a factual matter, the following criteria generally need to be satisfied (and the relevant provisions are included as standard in the issuance and corporate documentation of an SPE) for an SPE to be sufficiently protected against the risk of bankruptcy:

- restrictions on corporate object and activities in the articles of association of the SPE and in the issuance documents are meant to ensure that the SPE will not engage in any transactions other than the relevant securitisation transaction;
- debt limitation provisions in the issuance documents are meant to limit the number of creditors that may potentially file for insolvency of the SPE;
- independent directors and separateness covenants in the securitisation documents are meant to mitigate the risk of potential consolidation of the SPE with any other entity (including the originator); and
- security interests over the securitised assets of the SPE are meant to give the investors a priority over such assets vis-à-vis other creditors.

The securitisation documentation and/or the constitutional documents of an SPE would usually also include standard non-petition, limited recourse and subordination provisions, which are expressly recognised by the Securitisation Law. Any proceedings initiated in front of a Luxembourg court in breach of non-petition provisions will be declared inadmissible.

The Securitisation Law includes statutory subordination rules that determine the rank of various instruments that can be issued by an SPE. This order of priority may be overridden by the constitutional documents of, or any agreement entered into by, the SPE and any proceedings initiated in breach of either such default waterfall, or the overriding provisions, will be declared inadmissible.

7. Tax Laws and Issues

7.1 Transfer Taxes

There is in principle no Luxembourg stamp duty or registration tax on the transfer of financial assets, unless such transfer would be made by means of notary deed or the transfer agreement would be voluntarily registered in Luxembourg (or annexed to a document that is subject to mandatory registration).

7.2 Taxes on Profit

A securitisation company is a regular taxable entity liable for corporate income tax and municipal business tax on its income. However, interest and commitments to investors are in principle deductible from its tax base, resulting in the company being virtually tax neutral.

An attention point arises where the securitisation company earns taxable income other than interest income (eg, gains on discounted/distressed debt): in such case, the deductibility of interest might be capped under the interest deduction limitation rule (IDLR), which may cause tax leakage. There are certain exemptions to the IDLR. As of 2025, an additional IDLR exemption applies to SPEs that form a "single entity group"; it works similarly to the group equity ratio exemption.

While the anti-hybrid rules are generally not expected to affect securitisation companies, their impact should still be monitored on a case-by-case basis.

A securitisation undertaking in the form of a tax transparent entity is not liable for corporate income tax and, provided it does not conduct a business (which it should normally not), also not liable for municipal business tax.

7.3 Withholding Taxes

Income received by a securitisation undertaking may be subject to withholding tax in the source country.

A Luxembourg securitisation company (contrary to a tax transparent entity) qualifies as resident for tax treaty purposes. Whether it is effectively eligible to treaty benefits will depend on the perspective of the source jurisdiction.

There is, in principle, no Luxembourg withholding tax on interest payments made by an SPE.

7.4 Other Taxes

Management services provided to a securitisation undertaking benefit from a VAT exemption and VAT leakage is therefore reduced to a minimum. If they are specific and essential to the management of the securitisation undertaking, collateral management fees and investment advisory fees may be considered to be covered by this exemption. Subscription, underwriting and placement fees may also be VAT exempt, based on the general exemption of fees on the negotiation of securities.

A securitisation company qualifies, per se, as a VAT-taxable person in Luxembourg. As a result, the securitisation company must register for VAT if it receives services from non-Luxembourg service suppliers in order for it to self-assess the Luxembourg VAT (in the absence of a general exemption for such services).

A securitisation company is liable for minimum net wealth tax, which in the majority of cases amounts to EUR4,815. A tax transparent securitisation undertaking is not subject to net wealth tax.

7.5 Obtaining Legal Opinions

Tax opinions are rarely requested in the context of a securitisation transaction. Topics covered would relate to the income tax and net wealth tax position of the SPE, and possibly the VAT position. Assumptions and qualifications would then notably cover (i) the nature of income of the SPE, (ii) the ongoing compliance of the SPE with all of its obligations under the securitisation law and (iii) an exclusion of abuse of law and EU state aid law considerations.

8. Accounting Rules and Issues

8.1 Legal Issues With Securitisation Accounting Rules

All SPEs must prepare and publish annual accounts.

The annual accounts and financial statements of both regulated and unregulated SPEs must be audited by one or more approved Luxembourg independent auditors (*réviseurs d'entreprises agréés*). In case of a multi-compartment SPE, each compartment must be separately detailed in the financial statements of the SPE.

The Securitisation Law allows multi-compartment SPEs that are financed by equity, to approve the balance sheet and the profit-and-loss statement of each compartment by virtue of the votes of such compartment's shareholders only, provided that such option is included in their articles of association. Similarly, the articles of association of an SPE may provide that profits, distributable reserves and mandatory legal reserves of a compartment, are determined on a separate basis and without reference to the financial situation of the SPE as a whole.

Also, to provide investors with an adequate overview, the CSSF recommends that the valuation of the underlying assets is to be carried out at fair value.

In practice, the originators are generally located outside Luxembourg and, for this reason, the balance sheet treatment of the transfer of securitised assets and the questions of consolidation would normally be dealt with by the accountants in the jurisdiction of the originator.

8.2 Dealing With Legal Issues

In Luxembourg, legal opinions do not generally cover accounting issues.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Rob.Thomson@chambers.com