

Securitisation Company

La société de titrisation

Introduction

The securitisation vehicle (the “SV”) is not a special legal form but a special legal regime introduced in Luxembourg by the Law on Securitisation dated March 22, 2004, as amended (the “SEC Law” hereafter).

“Securitisation” within the meaning of the SEC Law covers “...all transactions by which a securitisation vehicle acquires or assumes directly or 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 issues securities whose value or yield depends on such risks.”

Main Features

The technique of securitisation in combination with the special regime provided by the SEC Law offers benefits to all parties involved yet mainly to the *originator* of the SV, i.e. the party transferring its assets (and correlated risks) to the SV.

On originator side, securitisation offers multiple advantageous features, for instance the conversion of illiquid assets into cash, the simple access to capital markets, the conversion of an on-balance-sheet debt business to an off-balance-sheet fee income stream, the transfer of risk to third-parties, etc.

For this reason, no longer only banks or insurers (as the traditional type of originator) use securitisation but increasingly also corporates, private equity, real estate structures and Islamic financing.

A SV can be set-up either as a company or as a fund, can further be organized as an “*umbrella*” with multiple underlying segregated and insolvency ring-fenced *compartments* per securitization investment and policy.

Moreover, a non-regulated SV is not subject to risk spreading or asset class diversification rules.

A SV which does not fall in the scope of special regulation is open to any type of investor and to all types of risk.

Securitisation undertakings only require prior approval by the Luxembourg Financial Supervisory Authority, the CSSF – *Commission de Surveillance du Secteur Financier*, if the SV makes offerings to the public on a continuous basis (so-called “*authorized securitization undertakings*”).

Corporate Governance

1. Legal Form

The SV in the form of a company (the “SV Company”) must be a corporation, i.e. a company with an own legal personality and capacity having a capital divided into / limited by shares (*société à capital*) as opposed to the fund conception or ordinary partnership scheme (*société de personnes*).

The SV Company may therefore only take the legal form of a public (or joint) stock company (*société anonyme – S.A.*), a private limited liability company (*société à responsabilité limitée – S.à.r.l.*), a partnership limited by shares (*société en commandite par actions – SCA*) or a cooperative in the form of an SA (*société coopérative organisée comme une société anonyme*).

2. Corporate Object and By-Laws

The corporate purpose of a SV Company is limited to securitization undertakings so as to be able to benefit from the legal and tax advantages provided by the SEC Law. The articles of association must therefore clearly make reference to being subject to the SEC Law.

A side from this specific restriction, the articles of association in regard of share capital, management, internal governance, etc. are in principle freely determined to the extent legally permissible under the general rules of the Law on Commercial Companies dated August 10, 1915, as amended (the “Company Law”), and applicable to the eligible legal forms referenced above.

3. Accounting and General Taxation

A *SV Company* is, as all companies subject to the Company Law, obliged to maintain a proper and true bookkeeping and must, within a legal dead-line after the close of the business year, establish and file annual financial statements and tax returns.

Pursuant to the SEC Law and in derogation of the Company Law, regardless of the eligible company form chosen, a *SV Company* must mandatorily appoint an independent auditor (*réviseur d'entreprises*) who will audit the annual accounts. If an “*authorised securitization undertaking*” subject to CSSF authorization and control, the auditor then needs to be likewise CSSF approved (*réviseur d'entreprises agréé*).

The *SV Company* is subject to corporate income tax (*impôt sur le revenu des collectivités - IRC*), municipal business tax (*impôt commercial communal - ICC*), the overall combined effective tax rate standing currently at 29.22% (December 2016).

In consequence, the *SV Company* can benefit from most of the double-tax-treaties concluded by Luxembourg as well as from the EU-Directives.

But the SEC Law ensures the tax neutrality at the *SV* level by introducing a special tax regime.

4. Special Tax Regime

/ Any commitments to investors or other creditors of the *SV Company* (even dividends) are qualified as **deductible expenses** of the *SV Company* resulting de facto in a tax neutrality close to nil at the level of the *SV Company* as the realised income is off-set by the expenses which generally are more or less equivalent.

The effective tax burden is “close to nil” because of the still applicable *annual minimal corporate income tax* (the “AMCIT”) payable by all fully taxable companies governed by Luxembourg law.

/ But the AMCIT is reduced if the *SV Company's* assets are in excess of 90% financial assets, transferable securities, bank deposits or receivables against related parties.

/ A *SV Company* benefits from an exemption from the 0.5% net wealth tax (*impôt sur la fortune – ISF*).

5. Other Special Features

SVs, regardless of the form, are so-called “*bankruptcy remote vehicles*”. The rights of the investors and of other creditors are strictly limited to the assets of the *SV* or of its compartments.

Further, the SEC Law prohibits any investor to petition for the bankruptcy of the *SV*.

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