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LUXEMBOURG SECURITIZATION VEHICLES

DEFINITION

Securitization is a financing process by which an originator transfers one or more assets or risks to a Securitization Vehicle in exchange for cash. The securitization vehicle is financed by issuance of securities backed by the assets (collateral) transferred and the income generated by those assets.

OBJECTIVE, PURPOSE

Securitization in Luxembourg is a tool, which enables the transferor (fund or company or special purpose vehicle - SPV) to acquire or assume risks linked to receivables, to any type of assets or to any commitment assumed by third parties or linked to activities executed by third parties. The securitization legal entity acquires or assumes such risk by issuing any type of securities the value and yields of which are linked to these securitized assets.

Cash flow producing illiquid assets can be pooled together into an investment vehicle through the use of securitization (SPV). Cash flows generated by the pool of assets are then redirected to support payments to instruments issued by the securitization vehicle to capital markets.

Using securitization, companies or individuals are able to separate some assets from their wealth, place them with a Luxembourg securitization vehicle and thus avoid having to undertake the risk of holding or managing such assets. Investors therefore finance the securitization vehicle by issuing securities. This way they are the ones bearing risks in connection with the assets held by that entity.

LEGAL BASIS

The Law of 22 March 2004 relating to securitization (the "Securitization Law") lays down the legal framework, which allows creation of securitization vehicles. In Luxembourg there are two types of securitization vehicles:

- a securitization company, which is a corporate entity created in front of a notary public;
- a securitization fund, which is an unincorporated joint ownership of assets, created contractually among its unit-holders.

Each vehicle may be divided up into sub-funds/departments, whose individual assets and liabilities remain legally separate from those of other sub-funds.

Underlying assets acquired by Luxembourg securitization undertakings include : receivables of any type (loans, customer receivables, commercial receivables, short or long term notes), cash flows linked to receivables, contracts, commitments, risks linked with contracts, futures realization, movable assets of any type, shares, bonds, any movable assets, real estate, intellectual property rights, Mortgage Backed Securities, Assets Backed Securities, commercial debts, mortgages, current accounts, debenture loans whether subordinated or not, any financial asset, any immovable asset (including real estate or rights in rem) but also all activities with a certain and reasonable value as well as all activities with a future income.

Instruments issued by the securitization vehicle do not all need to show the same characteristics. By allocating a different priority of principal amount and interest payment as well as a different rate of return to each instrument (or tranche), each such instrument (or tranche) satisfies specific requirements of specific investors with regard to risk, maturity and/or returns.

LEGAL FORM

SECURITIZATION FUNDS

Securitization funds are not legal entities. They are managed by a management company. They are set up in the form of a fiduciary estate separate from the management company, which must be a Luxembourg resident (Sàrl or SA, i.e. a private or public limited company). Assets and liabilities of such fund must be separate from those of the management company. A securitization fund may be made up of several sub-funds, which are independent from one another.

SECURITIZATION COMPANIES

Securitization companies must be incorporated under the form of a public limited company (société anonyme), a partnership limited by shares (société en commandite par actions), a private limited liability company (société à responsabilité limitée) or a cooperative company organized as a public limited company (société cooperative organisée comme une société anonyme).

Articles of incorporation of a securitization company may authorize its board of directors/ managers to set up one or several departments which would each relate to a distinct part of its assets and liabilities. Departments allow for a separation of management, liabilities, recourse and liquidation. The minimum capital of a securitization company is the standard minimum for commercial companies (EUR 12 500 or EUR 21 000).



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ADMINISTRATION AND ACCOUNTING

A securitization company has to prepare its accounts in accordance with general Luxembourg accounting principles.

A securitization fund has to be managed by a management company (a commercial company with a separate legal personality). A securitization fund can be divided into different sub-funds, which may be liquidated separately. A securitization fund is subject to the same accounting rules as they apply to Luxembourg collective investment funds. In both cases accounts of a securitization SPV must be audited by an auditor, who is approved by the CSSF.

SUPERVISION

A securitization vehicle needs approval and supervision of the CSSF if it issues securities to public on a continuous basis. Such an SPV must entrust its liquid assets and securities to a custodian, which must be a Luxembourg bank.

There are no regulatory constraints provided by the Law for securitization vehicles issuing securities by means of private placement.

TAX ASPECTS OF A SECURITIZATION FUND

Securitization funds are subject to the tax regime provided by Luxembourg legislation for a Luxembourg FCP (Fonds Commun de placement). Distributions of income to investors are fully deductible from a securitization company tax base. Distributions of income to investors are not subject to Luxembourg dividend withholding tax.

For residents Luxembourg tax administration usually accepts that transactions at the fund level are disregarded and the income is only recognized in the event of disposal of units and of a distribution made by the fund.

Non-residents are generally not subject to Luxembourg tax on income and capital gains derived from a fund.

TAX ASPECTS OF A SECURITIZATION COMPANY

A securitization company is subject to tax in Luxembourg under the standard corporate tax rate (i.e. the aggregate rate of 28.59% in Luxembourg City). In practice however taxable profit is likely to be close to zero due to the fact that most of securitization companies' income is immediately repaid to investors.

The law provides that any commitment (interest or dividends) to investors is considered to be a deductible expense.

In Luxembourg dividends paid by a securitization company are qualified as interest for fiscal purposes. However a dividend payment will not be subject to withholding tax under the provisions of the EU Savings Directive. Due to the fact that the company is fully subject to tax, it should, in principle, be entitled to benefit from the double tax treaties' network of Luxembourg.

A securitization company is not subject to any debt to equity ratio and is exempt from Luxembourg net wealth tax.

Please note that securitization vehicles cannot claim exemption related to collection of dividends or capital gains on participations. In addition capital contributions will only be subject to a flat capital duty of EUR 1,250. A securitization company will be exempt from annual net wealth tax of 0.5%.

TRANSFER OF RISK AND PROTECTION OF SECURITIZED ASSETS

The Law aims to facilitate securitization of receivables by limiting transfer formalities and by ensuring effectiveness of such transfers even in the events of bankruptcy of the originator. If a securitization SPV transfers recovery of receivables to any third party, securitized assets are protected from bankruptcy of any such third party since the SPV has the right to receive full payment of the recovered sums.

A single securitization company or a fund may be used for multiple issues and may hold multiple segregated departments and/or sub-funds. This is due to the fact that assets of a given compartment are exclusively available to satisfy claims of investors having invested in that compartment or to satisfy creditors whose claims relate to this particular compartment.

