Ashurst

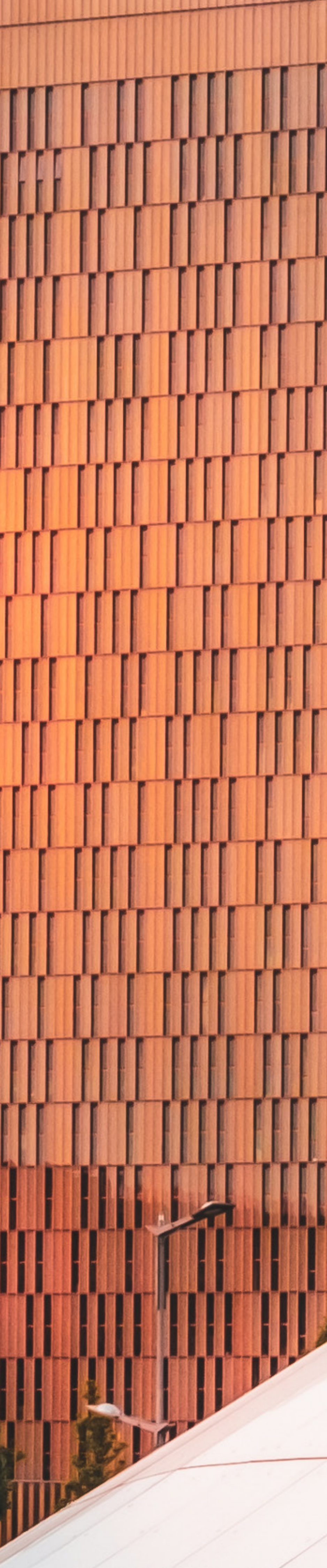
Luxembourg Securitisation Regime

February 2024

Outpacing change

Introduction

Luxembourg has established itself over the years as a popular jurisdiction with respect to the set-up of securitisation undertakings (an "**SV**") and securitisation structures. The main legal framework is the Luxembourg law of 22 March 2004 on securitisation, as amended (the "**SV Law**"), which has always provided a lot of flexibility and proved to be an excellent tool for investors from various backgrounds. The present brochure is deemed to provide a high-level summary of the main features of an SV and the SV Law. It is not meant to be a complete analysis of the entire Luxembourg SV regime. In case of specific queries and context-related issues more detailed legal advice should be sought.



Main features of an SV and the SV Law at a glance

1. An SV can be set up as a single entity structure containing multiple compartments, thus establishing a structure in which each compartment relates to a different underlying investment. All compartments can be created by way of a simple management board decision and are fully segregated from each other with a limited recourse effect. Therefore, cash flow and proceeds origination issues affecting one compartment will not have an impact on the underlying investments with respect to the other compartments.

2. There are no restrictions in the number of issuances and acquisition/origination of the underlying investment assets as long as the financial instruments are subscribed by investors in the context of a private placement. No ceiling amounts apply and no specific licences need be obtained.

3. Only SVs which offer their financial instruments to the public on a continuous basis must be authorised by the Luxembourg financial supervisory authority (CSSF). Offerings to the public will only be deemed to occur from the fourth public offer (including) onwards per financial year on an all-compartment basis. However, irrespective of any authorisation requirement any non-exempted public offer will trigger the application of EEA prospectus and public offer rules and therefore might require the publication of a CSSF approved prospectus. Private placements are however exempted from such prospectus publication obligation and can be done on the basis of a private placement memorandum or other contractual documents as the case may be.

4. In particular, the Luxembourg financial supervisory authority accepts under certain conditions that an SV itself originates loans from the proceeds obtained by the issuance of financial instruments instead of acquiring already existing loans from a separate originator entity on the secondary market.

5. SVs are allowed to provide security over the underlying securitised assets to secure the obligations of third persons as long as such obligations are related to the securitisation transaction.

6. Furthermore, the SV's management of its portfolio of underlying assets is not restricted to a passive management provided the assets have been acquired with proceeds stemming from private placements and that the portfolio consists of debt securities, debt financial instruments or receivables.

What legal structure does an SV usually have and how is it set up?

A Luxembourg securitisation vehicle is a corporate entity which 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 financial instruments whose value or yield depends on such risks. A securitisation may be carried out by a single SV or through two distinct entities, the first one acquiring all or part of the securitised risks (the acquisition vehicle) and the second one issuing financial instruments financing the acquisition of the securitised risks (the issuing vehicle). Each such undertaking qualifies as an SV under the SV Law.

A wide range of assets can be securitised, such as commercial loans, mortgage backed loans, commercial papers, consumer credits, non-performing loans, commodities, income from operating businesses and, more generally, any asset which has a certain value and/or a predictable future income, as well as any risks attached thereto, provided that the securitised risks originate exclusively from assets, receivables or obligations assumed by, or inherent to the activities of, third parties.

Generally speaking an SV can engage in two different types of asset acquisitions. In a true sale securitisation structure it acquires the legal and beneficial ownership of loans or of the receivables from an originator. This acquisition, as mentioned, is done out of the proceeds of the issuance of the financial instruments or the entry into loan agreements whose repayment is linked to the cash flows generated from the acquired assets. In such a case the assets are removed from the balance sheet of the originator who has obtained cash in consideration thereof. An SV can however also set up synthetic securitisation structures. In such a scenario the SV acquires the risks which are attached to underlying assets through specific derivatives, contracts or guarantees. In this case the legal and beneficial ownership of the underlying assets to which the acquired assets relate remain with the originator. The originator in a synthetic securitisation structure acquires a risk protection in consideration under the respective swap agreements. This means that the amount payable by the SV to the originator is normally calculated by reference to the loss in value that affects the underlying assets.

The assets can be acquired and held directly or indirectly by the SV. This means that it is also possible to set up structures in which a subsidiary of the SV is used for the purpose of the asset acquisition.

Originally, an SV always had to be financed by the issuance of Luxembourg or foreign law governed securities (valeurs mobilières). It therefore used to be foremost an issuance vehicle. However, the latest securitisation reform has brought more flexible to this topic. It is now also possible for an SV to exclusively enter into any form of loan agreement and loan structure with its investors without issuing any securities. In fact, the amended SV Law contains a provision which provides that whenever the SV Law refers to the issuance of financial instruments this notion also encompasses the entry into such loan structures. Please note that the same approach has been taken in this overview.

An SV may take the form of:

- a private limited liability company (société à responsabilité limitée) (S.à r.l.);
- a public limited liability company (société anonyme) (S.A.);
- a partnership limited by shares (société en commandite par actions) (SCA);
- a cooperative organised as a public limited company (société coopérative organisée sous forme de société anonyme);
- an unlimited company (société en nom collectif) (SENC);
- a common limited partnership (société en commandite simple) (SCS),
- a special limited partnership (société en commandite spéciale) (SCSp), and
- a simplified public limited liability company (société par actions simplifiée) (SAS).

SVs have to prepare and publish annual accounts, in each case to be audited by one or more approved Luxembourg independent auditors (réviseurs d'entreprises agréés) appointed by the management body of the SV.

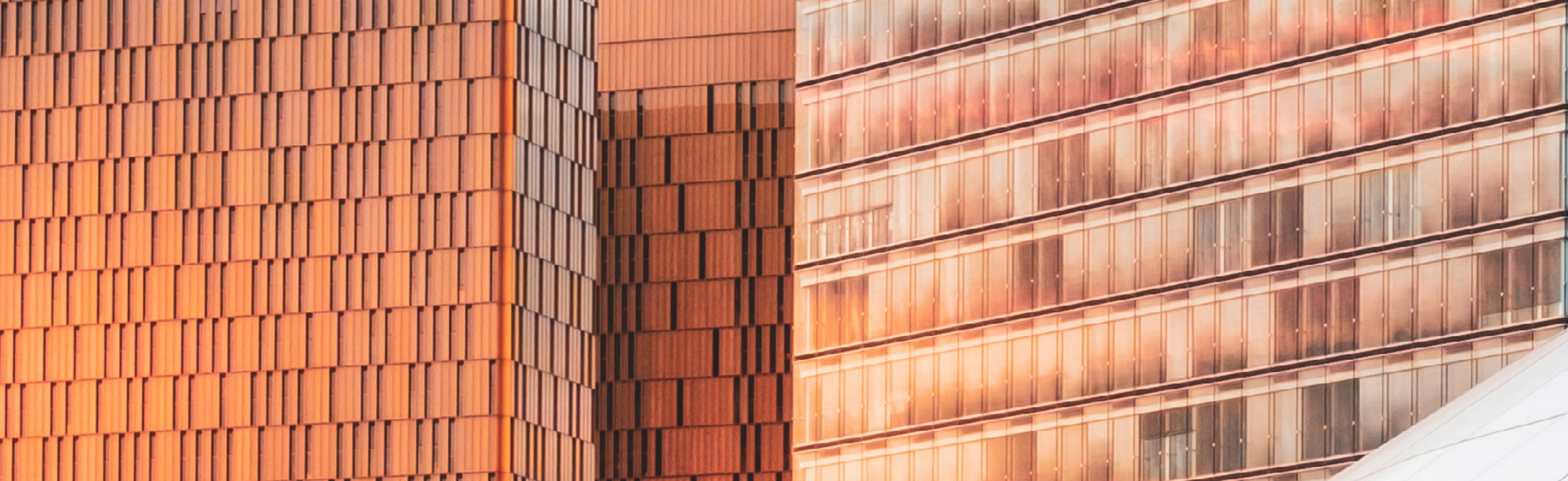
The most common corporate forms which are usually chosen for the set-up of an SV continue to be the S.à r.l. and the S.A. Both corporate forms are rather similar and both need to be incorporated before a Luxembourg notary. The minimum share capital of an S.A. is Euro 30,000 (with 25% having to be paid up) while the S.à r.l. has a minimum share capital of Euro 12,000 which needs to be fully paid up. The number of shareholders an S.A. can have is not limited whereas an S.à r.l. can only have up to 100 shareholders. Both entities can be set up with there only being one sole shareholder (founding shareholder). In a lot of instances market participants choose to set up an orphan structure by incorporating a Dutch stichting under Dutch law which then serves as sole shareholder of the SV. Furthermore, the shareholders are not named explicitly on Luxembourg RCS excerpts in the case of an S.A. while the shareholders of an S.à r.l. do not benefit from this type of anonymity. Transfers of shares held by shareholders of an S.à r.l. to third parties also require the approval under certain circumstances of a specific percentage of the other shareholders. The shares of an S.A. in contrast are however freely transferable to third parties. Finally, the management structure of an S.A. and S.à r.l. differ to a certain extent. S.A.s can have a one-tier (board of directors) and a two-tier structure (management board and supervisory board) while S.à r.l.s are only managed by a board of managers (one-tier structure). The major difference of an S.A. and S.à r.l. with respect to an SCA is the fact that the latter corporate structure requires the existence of two founding shareholders, i.e. the general partner as unlimited partner (associé commandité) and the limited partner whose liability is limited (associé commanditaire). Therefore, an SCA is only managed by the GP.

Generally speaking, SVs are subject to the same legal regime applicable to most other Luxembourg commercial companies having the additional advantage of benefitting from, among others, and as set out below, certain bankruptcy remoteness and compartmentalisation effects.

An SV may also be incorporated under the form of a fund, which does not have legal personality and which is represented towards third parties by its management company (société de gestion).

It is not a requirement of the SV Law that the SV constitutes a "securitisation" for the purposes of the Securitisation Regulation (2017/2042). In fact, if the SV does not issue tranched securities securitising credit risk as set out in the Securitisation Regulation it will only fall under the scope of the SV Law. In this respect, it is fair to say that the SV Law in terms of risk retention, due diligence and transparency requirements is a lighter regime than the one established by the Securitisation Regulation.

The incorporation of an SV under Luxembourg law is a relatively straightforward business. There is no specific approval or licencing procedure which would have to be applied for with the CSSF. In fact, in order to incorporate an SV which is subject to the SV Law it is already sufficient to explicitly mention in the articles of incorporation of the entity that the SV will be operating under the SV Law and that its main scope therefore consists of securitisation transactions within the legal definition of the SV Law. If it is intended to set up a multiple compartment structure it is sufficient to include the possibility of the management board of the SV to create such compartments by way of a simple board decision. No specific approval or notary procedure is necessary for the set-up of such compartments.



Is an SV an entity which is bankruptcy remote?

Yes. The SV Law offers the possibility to use different mechanisms in order to segregate the securitised assets from any insolvency risks of the SV. Most of these mechanisms can be provided for by contractual arrangements between investors, creditors, the SV and any other involved party.

Non seizure of the assets

Investors and creditors may contractually waive their rights to seize the assets of an SV.

Non petition clause

Investors and creditors may contractually waive their right to initiate any insolvency proceeding against an SV. This clause protects the SV against the actions of anyone who could have, for instance, an interest in opening a bankruptcy proceeding against the vehicle. Such provisions may be included in the SV's constitutional documents or in the issuance documents and are enforceable towards the investors and any third parties.

Subordination clause

Investors and creditors may choose to subordinate their right of payment to the prior payment of other creditors or other investors.

Limited / non-recourse clause

In addition to the effect brought about by the compartmentalisation of the SV as mentioned below investors and creditors can also limit their financial recourse against the SV to the amount of the proceeds received by the vehicle from the related underlying assets financed by such investors / creditors (limited recourse clause).

Furthermore, investors and creditors are also allowed to waive their financial recourse against an SV for specific temporary periods. For instance, if a payment of yield is in default, the investor may agree to wait for payment and not initiate any legal proceedings against the vehicle (non-recourse clause).

Compartmentalisation

As mentioned above, a very useful tool in order to achieve a relatively high degree of bankruptcy remoteness of an SV is the possibility to create several compartments within the same entity, each compartment relating to a distinct pool of assets financed by the issuance of the relevant compartment financial instruments.

The sole requirement for using this mechanism is that the constitutional documents of the SV must expressly authorise the management to create such compartments.

The compartments allow a pool of assets and corresponding liabilities to be managed separately, so that the performance of one compartment is not impacted by the risks and liabilities of the other compartments.

Each compartment is treated as a separate entity performing distinct transactions so that the assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment. This means that no recourse will be possible against the assets allocated to other compartments in case that investors' and/or creditors' claims relating to the relevant compartment have not been fully satisfied. This mechanism also offers the possibility for an SV to issue several types of financial instruments with different value, yields and redemption terms depending on the level of risks associated to the assets of each compartment.

Furthermore, each compartment can be liquidated separately or be subject to any bankruptcy proceeding without having any impact on the SV and the other remaining compartments.

Is an SV subject to mandatory supervision by the CSSF?

An SV is only subject to mandatory CSSF supervision and will be required to obtain an authorisation from the CSSF if it offers financial instruments (i) to the public and (ii) on a continuous basis. In order for an SV to be subject to the mandatory supervision by the CSSF both conditions must be met cumulatively. In this respect, in accordance with the SV Law an issuance of financial instruments to the public is an issuance

- which is not offered to professional investors within the meaning of article 1, point 5 of the Luxembourg law of 5 April 1993 on the financial sector;
- the denomination of which is lower than EUR 100,000; and
- which is not distributed under the form of a private placement.

Furthermore, the notion "on a continuous basis" is only met if the securitisation vehicle offers financial instruments more than three times per financial year on an all-compartment basis. This means that up to three public offers irrespective of the compartments involved can be made by an SV per financial year without triggering the authorisation obligation. However, there is no limit in terms of the number of private placements that an SV is allowed to make throughout its financial year.

When is an SV subject to the Prospectus Regulation?

Generally speaking, an SV as any other offeror of securities is not allowed to make an offer of securities to the public in Luxembourg or any other EEA Member State without the prior publication of an approved securities prospectus under Regulation (EU) 2017/1129 (the "**Prospectus Regulation**"). The vast majority of Luxembourg securitisation structures consists, however, of private placements. This means that the securities issued are offered by way of an exemption under the Prospectus Regulation. In most instances, such securities are offered to qualified investors (professional investors) only or have a per unit minimum denomination of at least EUR 100,000.

However, strictly speaking all public offer exemptions which are found in the Prospectus Regulation can be used in order for an offering of securities made by an SV to qualify as a private placement. The whole array of possible exemptions is set out in article 1 (4) of the Prospectus Regulation. Any subsequent re-sale of the securities, which has previously been subject to a public offer exemption, is, however, regarded as a separate, additional offer and therefore it must be determined again whether this new offer can meet the criteria for a second exemption.

Such public offer exemptions must be distinguished from "listing exemptions", which are set out in article 1 (5) of the Prospectus Regulation. In general, for any admission to trading on a regulated market in an EEA Member State the publication of an approved prospectus is required as well.

As a consequence, whenever the issuer can resort to a public offer exemption or a listing exemption no specific document will have to be drawn up and approved by any supervisory authority. In such a case most market participants usually work on the basis of a private placement memorandum whose content is primarily structured in respect of commercial and transactional aspects.

Can an SV engage in direct lending (loan origination)?

Yes. As a matter of Luxembourg law, the SV is authorised to originate loans to borrowers directly under certain circumstances instead of acquiring existing loans on the secondary market.

Direct lending activities undertaken by an SV

a. The CSSF takes the view that SVs are allowed to engage in direct lending transactions provided a series of requirements is met.

b. This means that structures in which the securitisation SV itself expressly grants loans instead of acquiring them on the secondary market can be regarded as a permitted securitisation activity provided that the securitisation SV does not allocate the funds raised from the public to a credit activity on own account and provided the issuance documentation clearly describes the borrowers (if already selected) or at least the criteria according to which the borrowers will be selected so that the investors are adequately informed of the risk, including the credit risks and the profitability of their investment at the time the financial instruments are issued.

c. Furthermore, information on the characteristics of the loans to be granted must be included in the issuance documents. The issuance documents must therefore spell out a number of concrete elements such as borrower size, borrower business activities, markets the borrower operates in and the products or services the borrower provides as well as the place of incorporation and supervisory requirements applicable to the borrower. Furthermore, the main features of the structure of the intended loans such as maturity, interest rate, interest periods etc. (to the extent known) have to be provided.

d. The fact that a securitisation undertaking primarily engages in direct lending activities according to the CSSF does not per se result in the securitisation undertaking qualifying as an alternative investment fund (AIF) in the context of the application of the Luxembourg law of 12 July 2013 on alternative investment fund managers (the "**Luxembourg AIFM Law**").

e. Despite the fact that the Luxembourg AIFM Law contains an explicit exemption with respect to SVs which is narrower than the definition of securitisation set out in the SV Law, as the exemption does not encompass direct lending activities, the CSSF takes the view that such vehicles are usually exempted from having an alternative investment fund manager provided they **exclusively issue debt securities or if they are not managed in accordance with a "defined investment policy" (within the meaning of the AIFM Law).**

f. This means that securitisation undertakings engaging in direct lending and which in addition to the issuance of debt securities also issue specific underlying related equity securities such as tracking shares might have to be set up as an AIF given that such vehicles would not be exclusively issuing debt securities.

Is an SV allowed to actively manage its portfolio of assets?

Active or passive management of the SV depending on the type of issuance/offering of the financial instruments relating to the asset portfolio

a. While the SV Law permits most kinds of assets to be securitised, the nature of securitisation transactions requires that the securitised risks arise exclusively from the assets acquired or assumed by an SV in the course of the securitisation and not from any entrepreneurial or commercial activity of the SV. Therefore, the CSSF has taken the view that SVs must have a passive attitude when managing their assets.

b. However, it has always been permitted that an SV may proceed to the re-negotiation of repayments or the credit terms in the event of financial difficulties of a debtor. Likewise, certain loan assets of the underlying portfolio can also be disposed of and replaced by other assets in specific scenarios. However, in this respect, the replacement criteria have to be clearly spelled out in the issuance documentation and be as concrete as possible. They should not depend on any normative assessment to be undertaken by the portfolio manager but should be triggered by rather objective criteria which do not require any detailed interpretation of current market developments by the portfolio manager. Otherwise, the investors in the SV would be taking a risk based on the competence, expertise and experience of the portfolio manager rather than on the structure and features of the underlying assets. In such a situation an additional risk would be securitised, i.e. the competence of the portfolio manager. However, despite the fact that the definition of securitisation under the SV Law is very broad such features (i.e. the manager's competence, expertise and experience) cannot be securitised. In other words, any management activities pursuant to such objective and predefined criteria would usually not be regarded as active management of the portfolio.

c. After the latest reform the SV Law, however, allows active management with regard to SVs securitising a portfolio of debt securities, debt financial instruments or receivables, provided that the SVs do not issue financial instruments to the public. Therefore, the above-described limitations still apply to SVs which have established a portfolio of assets with proceeds which have been generated by offers of financial instruments to the public or in scenarios where the portfolio also consists of assets other than debt securities, debt financial instruments or receivables. In other words, in the context of public offer scenarios where no exemption from EEA prospectus rules has been applicable active management of the portfolio assets continues to be restricted. The lifting of this restriction for private placement scenarios has created opportunities for actively managed CLO structures to be established in Luxembourg and is beneficial to the vast majority of the existing Luxembourg SVs as these mainly offer their securities by way of private placements.

What disclosure obligations can typically arise in the context of securitisation transactions?

The SV Law

There are no specific reporting and disclosure obligations applicable to a non-authorised securitisation SV under the SV Law. This means that only SVs which have obtained an authorisation from the CSSF and thus are allowed to offer securities to the public on a continuous basis will have to comply with specific disclosure obligations. These do not stem directly from the SV Law but are found in the CSSF's FAQs on securitisation.1 The information which needs to be submitted to the CSSF by an authorized SV can be separated into several different topics:

Constitutional documents

Any change to the constitutional documents of the SV, to its managing body or its réviseur d'entreprises must be notified to the CSSF and is also subject to the CSSF's prior approval. Furthermore, any change in control of the SV or management company is subject to the CSSF's prior approval also.

Issuance documentation/ financial reports

Additionally, any authorized SV must provide the CSSF with the relevant issuance documentation whenever financial instruments are intended to be issued as soon as such documentation is finalized (i.e. prior to it being executed). Furthermore, a copy of the financial reports drawn up by the SV for its investors and rating agencies, where applicable, must be submitted to the CSSF. Additionally, a copy of the annual reports and the documents issued by the réviseur d'entreprises within the context of the audits of the annual accounts must be submitted. In this respect, the CSSF also expects to be provided with the management letter drawn up by the réviseur d'entreprises in the course of the audit. Should such a management letter not have been drawn up the réviseur d'entreprises must confirm that fact.

Change of service provider and information on any change relating to fees and commissions

Furthermore, any information with respect to any change of the relevant service provider and substantive provisions in the underlying services agreement must be provided to the CSSF. The same applies with respect to any change relating to the fees and commissions paid to such service provider(s).

Periodic financial information

An authorized SV must also within **30 days** provide the CSSF with a listing of the new issues of financial instruments, of other outstanding issues and issues which matured over the relevant half-year under review. Additionally, a summary of the financial situation of the securitisation undertaking, including notably a breakdown of its assets and liabilities as well as the profit and loss accounts, by compartments, if applicable, must be submitted.

On the financial year closing date, a draft balance sheet and profit and loss account of the securitisation undertaking, also where appliable on a compartment basis, must be provided to the CSSF. The deadline for such submission is **30 days** starting as of the financial year closing date.

1 Question 17 of the "Frequently Asked Questions Securitisation" issued by the CSSF on 23 October 2013;

The Luxembourg Transparency Law and the Market Abuse Regulation

Once an SV has obtained the admission to trading of securities on a regulated market in Luxembourg or any other EEA Member State and provided the SV has chosen Luxembourg as its home Member State for transparency purposes the Luxembourg law of 11 January 2008 on transparency requirements for listed issuers (the "**Luxembourg Transparency Law**") will apply. Such an issuer will have to comply with the disclosure and reporting framework established by the Luxembourg Transparency Law.

However, SVs which have only obtained the admission to trading on a regulated market of debt securities with a per unit minimum denomination of **at least EUR 100 000** benefit from an exemption from the obligation to disclose periodic financial information. This means that such SVs do not need to publish, store and file annual and semi-annual financial reports under the Luxembourg Transparency Law. Should lower denominated debt securitised have been issued the exemption can still be used provided these debt securities have not been admitted to trading on a regulated market (or if they have been admitted to trading the market only qualifies as an multilateral trading facility (MTF) such as the Euro MTF of the LuxSE).

From any other obligations under the Luxembourg Transparency Law such an SV however cannot be exempted. This means that all SVs which have Luxembourg as its home Member State for transparency purposes, despite the application of the above referred-to exemption, must be registered with the Officially Appointed Mechanism (OAM) operated by the LuxSE for the purposes of storing regulated information. Regulated information in addition to be stored with the OAM also needs to be published in accordance with effective dissemination means and be filed with the CSSF via its e-RIIS filing portal.

Regulated information encompasses all the information the issuer is required to publish in accordance with the Luxembourg Transparency Law. Furthermore, inside information and PDMR notifications (notifications to be done by persons discharging managerial responsibilities or persons closely associated with them) to be published under the **Market Abuse Regulation (EU) No 596/2014** also qualify as regulated information. Information to be provided under articles 16 and 17 of the Luxembourg Transparency Law does, however, not constitute regulated information and therefore does not trigger the obligation to effectively disseminate, store and file such information.

SVs which have only obtained an admission to trading of their securities on a multi-lateral trading facility such as the Euro MTF market operated by the LuxSE are not subject to the provisions set out in the Luxembourg Transparency Law and therefore are not required to be registered with the above-mentioned OAM. In such a case transparency and disclosure obligations will only stem from the national framework governing such MTF listings, such as the Rules and Regulations of the LuxSE. However, the Market Abuse Regulation is also applicable with respect to listings on MTFs and any information to be disclosed under the Market Abuse Regulation such as inside information and PDMR notifications must be filed with the CSSF via its e-RIIS filing portal.

Are there any additional obligations an SV must comply with under the Securitisation Regulation?

In specific cases, securitisation structures can fall under the scope of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 (the "**Securitisation Regulation**"). The application of the Securitisation Regulation triggers a myriad of additional retention, due diligence as well as transparency and disclosure obligations for the involved SV and for the originators, sponsors and even investors in the structure. In order for such obligations to apply it must be determined whether the securitisation in question meets the definition of "securitisation" as set out in the Securitisation Regulation, which differs from the one under the SV Law.

Pursuant to article 2 (1) of the Securitisation Regulation a "securitisation" is a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranched, having all of the following features:

- payments in the transaction or scheme are dependent on the performance of the exposure or the pool of exposures; and
- the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme.
- a "tranche" is defined by the Securitisation Regulation as:
- a contractually established segment of the credit risk associated with an exposure or a pool of exposures;
- where a position in the segment entails a risk of credit greater than or less than a position of the same amount in another segment, and
- without taking into account any credit protection provided by third parties directly to the holders of positions in the segment or in other segments.

Therefore, it is crucial to determine on a strictly case-by-case basis whether the above-mentioned conditions are met. However, given that the definition of securitisation under the SV Law is broader than the definition of securitisation under the Securitisation Regulation many Luxembourg securitisation transactions do not meet the criteria of securitisation under the Securitisation Regulation. Consequently, such SVs are only required to comply with the rules set out in the SV Law.

As regards transparency and disclosure obligations imposed by the Securitisation Regulation the main obligations in this respect stem from its article 7 and should therefore be given a closer look. These obligations apply to originators, sponsors and securitisation SVs. However, according to article 7 (2) of the Securitisation Regulation the originator, sponsor and SV can designate among themselves one entity to fulfil the information requirements under article 7 of the regulation.

In this respect, it is important to note that in the context of private placements (i.e. where an approved prospectus has not been provided) a transaction summary or overview of the main features of the securitisation must be provided to the CSSF and upon request to potential investors.

Furthermore, it should not be overlooked that in non-private placement structures (i.e. where an approved prospectus has been obtained) information to be provided under article 7 of the Securitisation Regulation must be made available via a so-called securitisation repository.

So far two such entities have been registerd with ESMA in accordance with the Securitisation Regulation. One of these is European Data Warehouse. https://eurodw.eu/solutions/securitisation-repository/. The other one is https://www.secrep.eu/. However, it should be noted that specific securitisation transaction information stored on such providers is usually not publicly accessible but can only be accessed by the relevant investors via specific security mechanisms.

Are there any other reporting obligations which might apply vis-à-vis the Luxembourg Central Bank?

Yes, there are. An SV might have to comply with reporting obligations provided for in Regulation ECB/2013/40 of the European Central Bank of 18 October 2013 (the "**2013 ECB Regulation**") which have been completed in Luxembourg by Circular 2014/236 of the Luxembourg Central Bank of 25 April 2014.

Pursuant to the 2013 ECB Regulation, all SVs, irrespective of whether they are submitted to the SV Law or not, shall provide the European Central Bank (ECB) with adequate statistics on their financial activities.

From a Luxembourg perspective, this means in practice that any Luxembourg SV shall inform the Luxembourg Central Bank (BCL) of its existence within one week as from the date of the beginning of its activities, which will in turn inform the ECB. There is therefore no direct communication obligation vis-à-vis the ECB the SV would need to comply with itself.

Additionally, an SV shall provide the BCL with data on outstanding amounts, financial transactions and write-offs/writedowns on its assets and liabilities on a quarterly basis.

However, SVs whose balance sheet total does not exceed EUR 70 million within the year (i.e. not only as of the end of the financial year) are not subject to BCL reporting. The reason for this is the fact that the BCL takes the view that the reporting done by the "bigger" SVs exceeding the threshold is enough for statistical purposes.

The main obligations which arise, if the above-mentioned derogation is not applicable, consist mainly of quarterly and monthly reports and are set out in item 4.1 of BCL Circular 2014/236.

However, all SVs must notify specific information to the BCL so that it can get an identification code (item 3.2 of BCL Circular 2014/236). In this respect, a registration form in Excel format requesting legal information about the securitisation vehicle, the nature of the securitisation, ISIN codes of securities issued must be provided. This registration form must be submitted within one week of the SV taking up business as mentioned above.

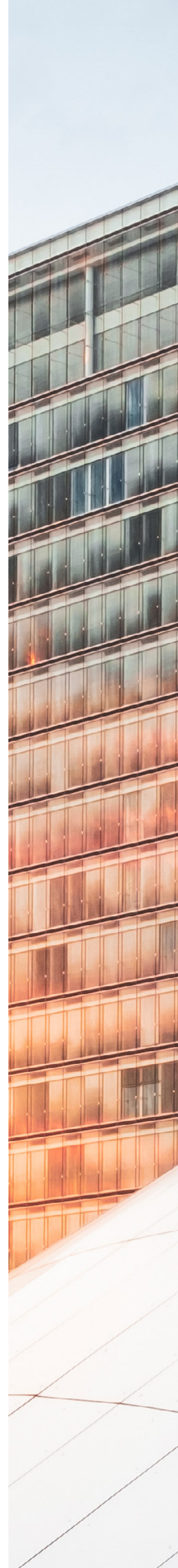
Can an SV provide collateral and guarantees?

Before the latest amendment of the SV Law an SV was basically only allowed to grant security interests over its assets or guarantees of any nature if the security was being provided in order to secure (1) claims from its investors or their representatives or (2) claims stemming from the SV's own commitments for the purpose of having the relevant assets securitised. Furthermore, it was also possible for an SV acting as an acquisition vehicle to securitise the assets for the benefit of the issuance vehicle in connection with the acquisition of the assets. This rather stringent and narrow approach has been rendered more flexible by the latest reform of the SV Law by allowing an SV to secure the obligations of others persons, and not only its own, as long as such obligations are related to the securitisation transaction. The sanction of nullity for non-compliant transactions had also been removed. Thus an SV can give security for the obligation of third parties. This allows an SV acquiring a junior loan to provide security over that loan in favour of the senior lenders. Furthermore, where the SV holds assets via one or more wholly owned subsidiaries it's possible for such SV to grant security for the indebtedness of the relevant subsidiaries as well.

What is the general tax treatment of an SV in Luxembourg?

The SV is subject to the general rules of Luxembourg business taxation and is as such liable to corporate income tax and municipal business tax at the current rate of up to 24.94% for 2024 (in Luxembourg-City). However, payments made by an SV to its investors or creditors as well as the commitments taken towards these same persons are treated as tax-deductible expenses and are not subject to Luxembourg withholding tax. The tax deductibility of such payments and commitments may, in certain circumstances, be limited by the interest-deduction limitation rules or other tax measures (e.g. ATAD II).

As a VAT taxable person per se, the SV must register for VAT if it receives services from non-Luxembourg service supplies for it to self-assess the Luxembourg VAT. However, management services rendered to an SV benefit from a VAT exemption. Finally and while the SV is exempt from net wealth tax, it remains subject to a (non material) minimum net wealth tax.



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