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Securitisation Vehicle (SPV) in Luxembourg

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Your LCG Team

Securitisation Vehicle (SPV) in Luxembourg

I. Concept of securitisation

Luxembourg's Securitisation Law of March 22nd, 2004, defines the concept of securitisation as follows: a business transaction in which a Securitisation Structure or Securitisation Vehicle (Special Purpose Vehicle, SPV) acquires or assumes direct or indirect risks from receivables, from other assets, assumed from third parties or from all or some obligations inherent in the business activities of third parties. A Securitisation Vehicle (SPV) finances itself from the issuing of securities whose value or the proceeds from which are dependant upon the assumed risks.

II. Legal Structure of a Securitisation Vehicle (SPV) in Luxembourg

Securitisation Vehicles (SPV) in Luxembourg are entities which either wholly perform the securitisation or which are involved in such transactions through the complete or partial assumption of the securitised risks or through the issuing of securities. The issuing of securities provides the financing.

1. Legal form

In Luxembourg, there are two types of Securitisation Vehicles (SPV), namely the non-regulated Securitisation Company in the form of a corporation and the Securitisation Funds.

1.1. Securitisation Company

As a corporation, a Securitisation Company in Luxembourg may be accordingly formed in the following legal forms: the Public Limited Company (PLC., Corp./SA); Limited Liability Company (LLC., Ltd./SARL); Partnership Limited by Shares (SCA) or Co-operative in the form of the Public Limited Company (SCOSA).

1.2. Securitisation Funds

In contrast to a Securitisation Company, a Securitisation Fund in Luxembourg does not have legal personality and instead consists of one or more than one jointly owned asset or trust asset. The Fund is managed by a Management Company which itself must be a Trading Company.

2. Formation

How a Securitisation Vehicle (SPV) is formed is dependent upon the particular legal form chosen.

2.1. Securitisation Company

A Securitisation Company in Luxembourg is formed through the recording of its articles of association by a notary. Its articles of association will subsequently be published in the Official Bulletin (Mémorial C) and lodged with Luxembourg‘s Trade and Companies Register.

2.2. Securitisation Funds

A Securitisation Fund in Luxembourg is formed in contractual form as jointly owned assets or as trust assets. The assets of such a Securitisation Fund require to be separated from those of the Management Company resident in Luxembourg.

3. Minimum capital

3.1. Securitisation Company

The minimum capital requirement of a Securitisation Company in Luxembourg which has been formed as a corporation is dependent upon the particular legal form chosen. The minimum capital relates to the legal entity as a whole and not merely to the individual compartments.

3.2 Securitisation Funds

In contrast, no minimum capital is prescribed for Securitisation Funds in Luxembourg. A minimum capital requirement is only prescribed for those Management Companies managing Funds. The said requirement will be determined by the particular legal form in which the Management Company has been formed.

4. Securitisation structures

Securitisation may be effected either through the transfer of the legal ownership of the assets (a “true sale” transaction) or through the transfer of the credit risks of the assets (a “synthetic” transaction).

4.1. “True sale” transaction

In a so-called “True Sale” transaction, the originator (the original creditor) sells an asset pool to a Securitisation Vehicle (SPV) in Luxembourg which subsequently issues securities which are secured exclusively by the transferred assets and the payment streams resulting from the said transfer. A Securitisation Vehicle (SPV) in Luxembourg acquires the said asset pool using the proceeds generated from issuing securities. The originator consequently transfers the legal as well as the beneficial ownership of the assets to the Securitisation Vehicle (SPV) in Luxembourg.

4.2. “Synthetic transaction”

In a “synthetic” transaction, the originator eliminates the credit risk through purchasing credit derivatives. The said elimination is achieved without selling the asset pool to a Securitisation Vehicle (SPV) in Luxembourg.

5. Asset classes (securitisation objects)

There exist no restrictions on which assets may be securitised in Luxembourg‘s Securitisation Law. Securitisation transactions may consequently pertain to moveable and immoveable assets including yet not limited to, for example, diamonds; champagne; intellectual property; receivables of all types as well as all activities having a real value or which are expected to generate proceeds in the future.

The said securitised assets or risks will finally be represented by registered or bearer shares including, for example, shares, certificates and bonds.

6. Separation into compartments

The assets of a Securitisation Vehicle (SPV) in Luxembourg may be separated into a single compartment or several compartments. If the said separation is to be possible, it is required that this be specified in the articles of association of a Securitisation Company in Luxembourg or the contractual provisions of a Securitisation Fund. Each compartment therein represents an independent entity. This subsequently enables different securitisation transactions to be performed individually by each of the respective compartments. Moreover, the said compartments may be liquidated separately.

7. Supervision

If a Securitisation Vehicle (SPV) in Luxembourg issues securities to the public continuously, it requires the approval of and is subject to the supervision of Luxembourg‘s Financial Market Authority (CSSF). Moreover, a Securitisation Vehicle (SPV) in Luxembourg must entrust its liquid assets, including its securities, to a bank in Luxembourg on a fiduciary basis. In contrast thereto, the Law does not lay down any restrictions for Securitisation Instruments which issue securities through private placement.

8. Insolvency protection for Securitisation Vehicles (Securitisation Instruments)

The assets of a Securitisation Vehicle (SPV) in Luxembourg are treated separately from the assets of the originator. This therefore means that in the case of the originator‘s insolvency, this cannot have any effect upon the Securitisation Vehicle (SPV).

III. Tax structure of a Securitisation Vehicle (SPV) in Luxembourg

1. Securitisation Company

1.1. Corporate taxation

As a corporation, a Securitisation Company in Luxembourg is subject to corporate taxation annually at a rate of 29.22%. Corporate taxation consists of the following:

1.1.1. Corporate income tax

In Luxembourg, corporate income tax at a rate of 21% is levied on income exceeding 15,000 EUR (or at a rate of 20% on income not exceeding 15,000 EUR) and is increased by the solidarity surtax at a rate of 7%.

All corporations resident in Luxembourg which do not require a trade licence and whose assets, securities and bank balance together exceed 90% of its balance sheet total are required to pay only the minimum corporate income tax of 3,210 EUR (3,000 EUR plus the 7% solidarity surtax).

Notwithstanding this, the basis of assessment for corporate income tax may be reduced by all obligations relating to the investors‘ remuneration, such as interest or dividends, due to them constituting fully tax-deductible business expenses.

1.1.2. Municipal business tax

All businesses resident in Luxembourg (e.g. trading-, industrial-, mining- or craft businesses) as well as the permanent establishments of foreign companies are subject to municipal business tax at a rate of 6.75%.

1.2. Tax exemptions

The Securitisation Company in Luxembourg is liable neither to the municipal business tax nor to withholding tax on distributions to investors.

1.3. Double taxation agreements (DTA application)

The Securitisation Company in Luxembourg may benefit from Luxembourg‘s network of double taxation agreements (DTA‘s) due to its unlimited tax liability.

2. Securitisation Funds

Due to Securitisation Funds in Luxembourg lacking legal personality, it is the shareholders and their income which is liable to tax and not the Fund itself. A Securitisation Fund in Luxembourg is accordingly neither liable to corporate income tax nor to the so-called “subscription tax” (“Tax d’ Abonnement”). As also applies in the case of a Securitisation Company in Luxembourg, a Securitisation Fund in Luxembourg is not liable to withholding tax on distributions to its investors.

IV. Practical aspects of Securitisation Vehicles (SPV) in Luxembourg

As a consequence of the afore-mentioned tax liability of a Securitisation Fund in Luxembourg, it is not widely used in practice. Instead, it is the Securitisation Company in Luxembourg which is more widely used. The Public Limited Company (PLC., Corp./SA) is the most commonly used legal form, particularly if issued securities are to be publicly sold. In the case of the Limited Liability Company (LLC., Ltd./SARL), securities are not permitted to be issued on the capital market nor to be quoted on the stock exchange.

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