

HOW TO SET UP

A SECURITISATION VEHICLE

DESCRIPTION

Securitisation is a financial technique that consists in transferring the risks pertaining to certain underlying assets, such as receivables or other eligible assets, to a special purpose vehicle, which will finance the acquisition of the underlying assets by the issue of transferable securities to investors. The amended law of 22 March 2004 on securitisation defines securitisation as “the transaction by which a securitisation undertaking 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”. The securitisation vehicle takes on these risks by acquiring the securities, guaranteeing the obligations or bearing the risk in some other manner.

SUPERVISORY AUTHORITY

Only securitisation vehicles that issue securities on a continuous basis to the public are subject to regulation by the supervisory authority, the *Commission de Surveillance du Secteur Financier* (CSSF).

LEGAL AND REGULATORY FRAMEWORK

The legal provisions applying to a securitisation vehicle are set out in the amended law of 22 March 2004 on securitisation.

LEGAL FORM

A securitisation vehicle can be set up either as a commercial company or as a securitisation fund managed by a management company.

Securitisation funds may consist of one or several co-ownerships or one or several fiduciary estates. Securitisation funds which consist of one or more fiduciary estates are subject to the rules on trust and fiduciary contracts. The management regulations of the fund shall expressly specify whether the fund is subject to co-ownership or trust and fiduciary rules.

A securitisation company can be incorporated in the legal form of a public limited liability company (SA - *société anonyme*), a corporate partnership limited by shares (SCA - *société en commandite par actions*), a private limited liability company (Sàrl - *société à responsabilité limitée*) or a co-operative company organised as a public limited liability company (SCoSA - *société coopérative organisée comme une société anonyme*). The articles of incorporation may authorise the creation of one or more compartments, each compartment corresponding to a distinct portfolio of assets and liabilities of the securitisation company.

EXTERNAL AUDITING

The accounts of a securitisation vehicle are audited by one or more independent auditors (*réviseur d'entreprise agréé*) appointed, as the case may be, by the management body of the securitisation company or by the management company of the securitisation fund. The independent auditors of an authorised securitisation vehicle must be authorised by the CSSF.

AUTHORISATION REQUIREMENT

A securitisation vehicle which issues securities to the public on a continuous basis must be authorised by the CSSF to exercise its activities. *In all other cases the securitisation vehicle is not subject to regulation and is not requested to satisfy the obligations listed below.*

In the absence of a legal definition of the notion “issued to the public on a continuous basis”, the CSSF has clarified in its Q&A, dated 23 October 2013, that a securitisation vehicle will be deemed to issue securities on a continuous basis if it makes at least three issues of securities to the

CAPITAL BASE

At incorporation, a *société anonyme* or a *société en commandite par actions* must have a minimum share capital of EUR 31,000, and a *société à responsabilité limitée* a minimum share capital of EUR 12,500. In the case of a securitisation funded these rules apply to the respective management company.

public per year. The CSSF considers the following not as issue of securities to the public:

- issues sold to professional clients in the sense of Annex II of the Directive 2004/39/CE (MiFID) are not deemed to be issued to the public;
- the issue of securities with a denomination of EUR 125,000 are not deemed to be issued to the public;
- the listing of a security on a regulated or alternative market does not ipse facto mean that it is deemed to be issued to the public;
- issues sold by private placement, whatever their face value, are not deemed to be issued to the public; however, subscription to securities by an institutional investor or financial intermediary with a view to subsequently selling these securities to the public does constitute a public issue.

CENTRAL ADMINISTRATION

An authorised securitisation vehicle must have its registered office and central administration in Luxembourg, which means that all accounting and administrative tasks must take place in the Grand Duchy.

SHAREHOLDERS

The vehicle to be authorised must communicate to the CSSF the identity of its direct and indirect shareholders and associates, whether natural persons or legal entities, who hold a qualifying participation in the undertaking or who are in a position to exercise significant influence over the conduct of business, and the amount of such participations. Authorisation can be refused if the said shareholders or members are not satisfactory. Where close links exist between the vehicle to be authorised and other natural or legal persons, authorisation shall only be granted if these links do not prevent the CSSF from effectively exercising its supervisory functions.

CUSTODY OF LIQUID ASSETS AND SECURITIES

An authorised securitisation undertaking must entrust the custody of its liquid assets and securities to a credit institution established or having its registered office in Luxembourg. The appointment of a sub-custodian is allowed.

PROFESSIONAL STANDING AND EXPERIENCE

The members of the administrative, management and supervisory bodies of a securitisation company or a management company of an authorised securitisation vehicle, as well as direct or indirect shareholders who are in a position to exercise a significant influence over the conduct of the vehicle, must be of sufficiently good repute and have the experience and means required for the performance of their duties. To that end, the names

of those persons, and of every person succeeding them in office, must be notified forthwith to the CSSF.

IMPACT OF THE AIFM LAW ON SECURITISATION VEHICLES

A securitisation vehicle does not qualify as an alternative investment fund (AIF) within the meaning of the law of 12 July 2013 on alternative investment fund managers (AIFM Law), given that securitisation special purpose vehicles are excluded from the scope of the AIFM Law.

APPLICATION FILE

The following elements, among others, must be included in a file submitted for authorisation of a securitisation vehicle:

- the articles of incorporation or management regulations or a draft of these documents;
- the composition of the board of the securitisation vehicle or its management company, the identity of other managers, their curriculum vitae and a copy of their police record;
- the identity of shareholders with a significant influence on the conduct of business of the securitisation vehicle or its management company, and their articles of incorporation;
- the identity of the initiator and, where relevant, its articles of incorporation;
- information concerning the custodian;
- information concerning the administration and accounting organisation of the vehicle;
- agreements or draft agreements with service providers;
- the name of the external auditor;
- draft documents relative to the initial issue of securities or, for vehicles that are already active, the issue contract and other documents relative to the securities already issued.

Authorised securitisation undertakings are entered on a list by the CSSF. Such entry is tantamount to an authorisation and will be notified to the securitisation undertaking.

AUTHORISATION PROCEDURE

A securitisation undertaking is authorised only if the CSSF approves its articles of incorporation or management regulations and, as the case may be, authorises its management company. Securitisation companies and management companies of securitisation funds must have the organisation and resources necessary for the exercise of their activities and to enable supervision by the CSSF.

Useful information sources

www.cssf.lu

Commission de Surveillance du Secteur Financier
(Luxembourg financial supervisory authority)

www.alfi.lu

Association of the Luxembourg Fund Industry