

Modernisation of the Law of 22 March 2004 on securitisation

A draft Bill of law 7825 (“**Bill**”) amending the Law of 22 March 2004 on securitisation (“**Securitisation Law**”) and certain other laws was submitted to the Luxembourg Parliament on 21 May 2021 by the Luxembourg Minister of Finance. The Bill provides for general modernisation of the Securitisation Law, and aims to strengthen the position of the Luxembourg market as a leading European securitisation place.

Overview of the key changes:

Additional corporate forms

Special limited partnerships (*sociétés en commandite spéciale*), simple limited partnerships (*sociétés en commandite simple*), general corporate partnerships (*sociétés en nom collectif*) and simplified joint stock company (*sociétés par actions simplifiée*) are now available as corporate forms for securitisation companies.

New financing methods

The current Securitisation Law requires securitisation vehicles to finance their acquisition of risks by the issuance of securities. The Bill extends the instruments that can be issued to include financial instruments other than securities (such as warrants, futures, options etc.) and it now allows securitisation vehicles to be fully financed by credit facilities that no longer need to be either ancillary to the issuance of securities, for warehousing purposes or for short-term liquidity purposes.

Active management

The Bill allows securitisation vehicles to actively manage a portfolio of assets consisting of debt securities or loans, to the extent that they do not issue financial instruments or receive financing from the public (please see below for the definition of “public”).

Restrictions on security interests and guarantees are lifted

The Bill provides the possibility for securitisation vehicles to grant security interests in broader fashion by requiring only that such security be granted in the context of a securitisation transaction.

Legal subordination

The Bill provides for a comprehensive set of rules defining subordination of the financial instruments issued by securitisation vehicles.

Better investor protection

The Bill grants better investor protection on a compartment-by-compartment basis by allowing the constitutive documents of securitisation undertakings to organise (i) shareholder votes on the approval of annual accounts, (ii) distributions of profits and reserves and (iii) allocations to the legal reserve per compartment, rather than at the level of the whole securitisation undertaking (aggregating all compartments). These provisions clarify uncertainties previously existing on these topics.

Registration of Securitisation funds

Securitisation funds are now required to be registered with the *Registre de Commerce et des Sociétés* ("RCS"), and, as a result, will have an RCS registration number.

Regulated securitisation undertakings

The Bill incorporates the guidance provided by the CSSF on the definitions of issuance of securities "to the public" and "on a continuous basis" to the Securitisation Law. As a result, and in line with the FAQs of the CSSF on securitisation, issuance of securities are on a continuous basis if more than three issuances of securities are carried out by a securitisation undertaking (taking into account all its compartments, not at compartment level) in the same financial period. An issuance is to the public if it is not targeted at professional clients, if the securities are in denominations below EUR 100,000 and the issuance is not done under a private placement.

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We undertake no responsibility to notify any change in law or practice after the date of this newsletter.