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## The modernisation of the Luxembourg securitisation law – The best is yet to come



On 21 May 2021, the Luxembourg Minister of Finance submitted Bill No. 7825 (the Bill) to the Luxembourg Chamber of Deputies (*Chambre des Députés*), which, among others, should modernise the Luxembourg law of 2 March 2004 on securitisation, as amended (the Securitisation Law) by aiming to respond to market demands and practices that have arisen since the inception of the Securitisation Law.

The very welcomed key modifications of the Bill to the existing regulatory securitisation framework are:

### Active management

The current Securitisation Law does not explicitly authorise a securitisation vehicle to actively manage its assets. However, the Bill introduces the possibility to actively manage risk portfolios comprising debt securities, financial debt instruments and receivables, to the extent that those securities or instruments are not offered to the public.

### Security interests

Under the existing legal regime, a securitisation vehicle may grant security interests over its assets only for the benefit of its investors or creditors. The Bill provides for securitisation vehicles with greater flexibility so that they may grant security interests over their assets to parties that are involved in the securitisation transaction and who are not direct creditors of the securitisation vehicle.

### New type of funding

Currently, the Securitisation Law requires a securitisation entity to issue securities whose value or return is based on the securitised assets.

The Bill specifies that, in addition to the issue of financial instruments, a securitisation vehicle may engage in all types of borrowing, under the condition that the value or return of such financial instruments or loans depend on the underlying assets. It, thus, clarifies the funding instruments that can be used and, ultimately, allows securitisation vehicles to be funded via loans such as profit participating or asset-backed loans.

## Ranking / Legal Subordination

The Bill, for the sake of clarity, provides a comprehensive set of rules on the subordination of financial instruments issued by a securitisation vehicle, unless otherwise agreed. For instance, debt instruments with a non-fixed yield are legally subordinated to fixed-yield debt instruments issued by the same securitisation vehicle.

## Issues to the public

Securitisation vehicles that continuously offer financial instruments to the public must be licensed by the CSSF. Currently, the Securitisation Law does not define the concept of “on a continuous basis to the public” (although clarified by the CSSF in its [FAQs](#)).

The Bill contemplates to clarify the definition of this concept so as to bring more legal certainty to this topic.

## Legal forms

The Bill increases the number of legal forms that can be used for securitisation companies by extending them to: the unlimited company (“*société en nom collectif*”), the common limited partnership (“*société en commandite simple*”), the special limited partnership (“*société en commandite spéciale*”) and the simplified limited company (“*société par actions simplifiée*”). The increase should attract investors such as private equity houses or family offices who already use partnership structures in Luxembourg.

The flexibility to create compartments and the choice to have either a securitisation company or a securitisation fund remains an integral part in the Bill.

For more information and to stay up to date on this topic, please feel free to reach out to the contacts listed on this article or your usual Luther S.A. contact.

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