International Comparative Legal Guides

Securitisation 2026

A practical cross-border resource to inform legal minds

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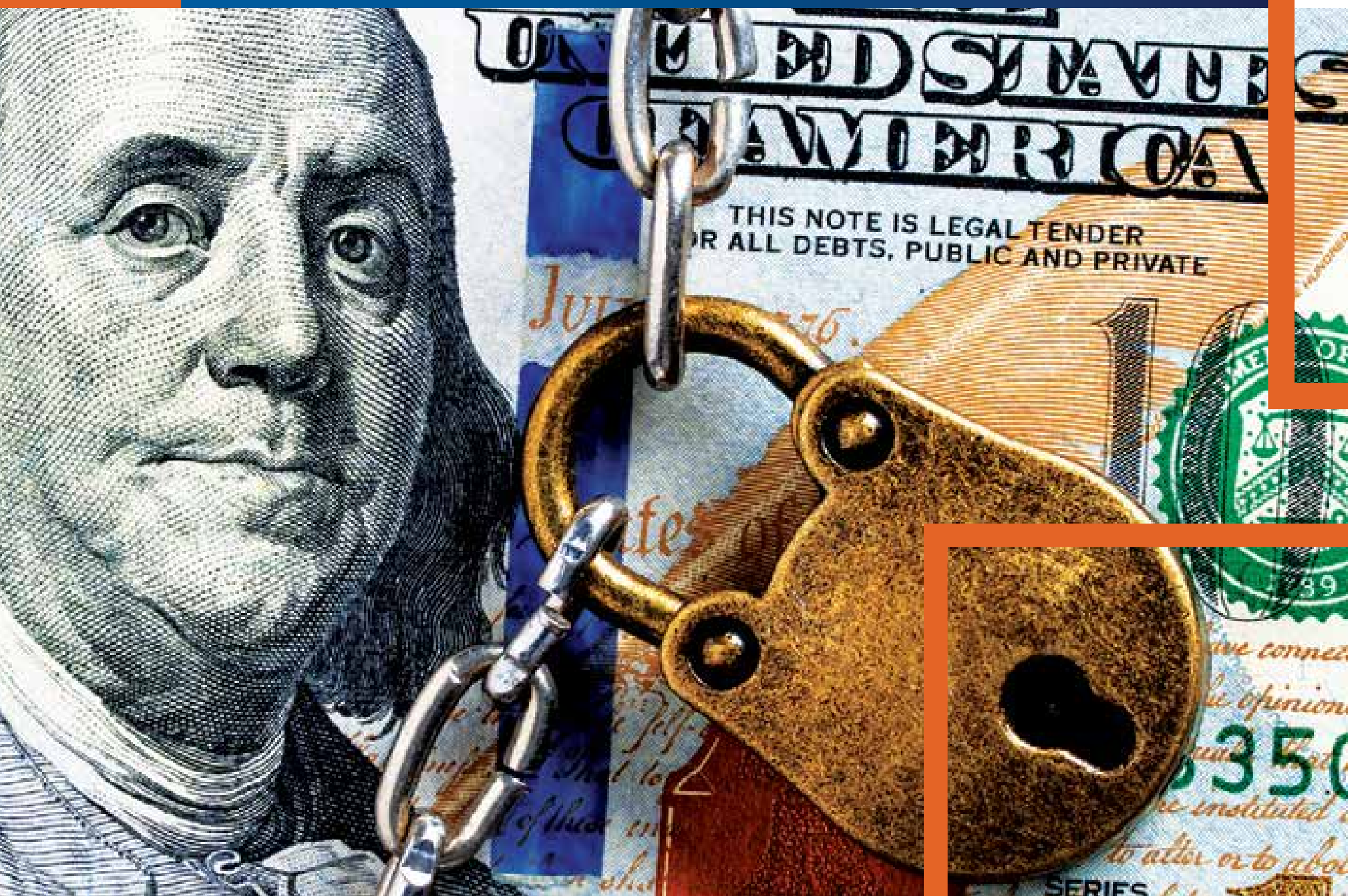

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1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a binding contract arise as a result of the behaviour of the parties?

Under Luxembourg law (provided the parties have reached an agreement), it is not necessary that the parties enter into a written agreement to evidence the sales of goods or services. According to article 109 of the Luxembourg Commercial Code, any means of evidence (including invoices) are acceptable in respect of agreements between merchants (*commerçants*) and, depending on the specific circumstances, an agreement between parties may be evidenced by their behaviour. However, according to article 1341 of the Luxembourg Civil Code and the Grand-Ducal Regulation dated 22 December 1986 made pursuant to article 1341 of the Luxembourg Civil Code, a contract, unless entered into between merchants, shall be evidenced in writing if the value of the contract exceeds the amount of EUR 2,500.

Further, article 1326 of the Luxembourg Civil Code provides that if the agreement creates an obligation to pay a sum of money or deliver a fungible asset to only one party, the agreement must bear the signature of the obligor (handwritten or electronic) and mention the relevant amount/quantity in full.

1.2 Consumer Protections. Do your jurisdiction's laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

Consumer credit. The interest rate may, in principle, be freely determined between the parties to a loan agreement and may exceed the legal interest rate. However, if the interest rate is manifestly usurious, a Luxembourg court may reduce it to the applicable legal interest rate. If the borrower is a consumer, information must be provided regarding the effective annual global interest rate (*taux annuel effectif global*) and on the interest amount charged for each instalment.

Interest on late payment. In commercial transactions between professionals, article 5 of the Luxembourg Law dated 29 March 2013 on late payments for commercial transactions, transposing Directive 2011/7/EU, sets a maximum limit calculated on the basis of the European Central Bank's key interest rate (*taux directeur*) plus 8%, unless otherwise provided in the relevant agreement. In transactions between a professional and a consumer, the interest rate on late payments is determined by a Grand-Ducal Regulation for each calendar year; for 2026, it is fixed at 3.75%.

Compounding of interest. Pursuant to article 1154 of the Luxembourg Civil Code, contractual compounding of interest is, in principle, only permitted with respect to interest due and payable for a period of at least one year and where parties have agreed in writing to such compounding.

Early repayment. Under article L. 224-17 of the Luxembourg Consumer Code (the Consumer Code), a consumer has the right to proceed to an early repayment of its debt, in full or in part, under a consumer loan agreement without penalties. The lender may not charge any additional amount for the remaining term of the loan (i.e., interests or costs). However, the lender is entitled to recover fair and objectively justified costs that are directly linked to the early repayment, provided that the early repayment has been made during a fixed-rate period.

Consumer's right of withdrawal. Under article L. 224-15 of the Consumer Code, a consumer has a right of withdrawal in connection with its entry into a consumer loan agreement with a professional without any justification and for a period of 14 calendar days calculated on the later of: (i) the day of entry into the loan agreement; or (ii) the receipt by the consumer of the terms and conditions and information of the loan agreement. Under article L. 221-3 of the Consumer Code, a similar right is granted to consumers in relation to a number of other agreements (i.e., distance financial services contracts).

Moratorium on consumers' debts. In relation to their personal debts, individuals may request assistance from the *Commission de Médiation en matière de surendettement* in Luxembourg, in accordance with the provisions of the Law of 8 January 2013 concerning over-indebtedness, as amended. The admission of such request by the commission triggers an automatic stay of proceedings that may have been commenced against the applicant. The stay period can last up to six months and may result, among others, in a restructuring of the debts or a reduction of agreed interest rates.

Collective action of consumers. The Consumer Code was last amended through the Law of 20 November 2025, which transposed Directive (EU) 2020/1828 on representative actions. This amendment enables consumers affected by the same professional misconduct to pursue collective remedies.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

In general, there are no different requirements that apply under Luxembourg law if a receivables contract has been entered into with a public entity in Luxembourg, provided that the public entity is carrying out a commercial transaction and is acting *jure gestionis*, i.e., the transaction is governed by private law as opposed to sovereign acts *jure imperii*, which are governed by public law.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in your jurisdiction that will determine the governing law of the contract?

The provisions of Regulation (EC) No. 593/2008 of the European Parliament and the Council dated 17 June 2008 on applicable law to contractual obligations (the Rome I Regulation) are directly applicable in Luxembourg. According to article 4 of the Rome I Regulation, where the seller and the obligor do not specify an express choice of law governing the receivables contract, the applicable law will be the law of the country (i) that is most closely connected to the situation, and (ii) typically, the law of the country where the party to effect the characteristic performance of the contract has its residence, except when it results from the circumstances of the case that the contract is manifestly more closely connected with another country, in which case the law of that country shall apply.

2.2 Base Case. If the seller and the obligor are both resident in your jurisdiction, and the transactions giving rise to the receivables and the payment of the receivables take place in your jurisdiction, and the seller and the obligor choose the law of your jurisdiction to govern the receivables contract, is there any reason why a court in your jurisdiction would not give effect to their choice of law?

If: (i) both the seller and the obligor have their seat in Luxembourg; (ii) the transactions giving rise to the receivables and their payment will occur in Luxembourg; and (iii) the seller and the obligor have chosen the law of Luxembourg to govern the receivables contract, the choice of the parties to have the receivables contract governed by Luxembourg law will be recognised and upheld by a Luxembourg court in accordance with the provisions of the Rome I Regulation.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in your jurisdiction but the obligor is not, or if the obligor is resident in your jurisdiction but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in your jurisdiction give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

If either: (i) the seller has its seat in Luxembourg but not the obligor; or (ii) the obligor has its seat in Luxembourg but not the seller, and the parties choose the foreign law of the country in which either the obligor or the seller have their respective seat to govern the receivables contract, the choice of the parties to have the receivables contract governed by foreign law will be recognised and upheld by a Luxembourg court in accordance with the provisions of the Rome I Regulation, unless the application of the provisions of foreign law would be manifestly incompatible with Luxembourg public policy (*ordre public*) provisions as provided by article 3(3) of the Rome I Regulation.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does your jurisdiction's law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., your jurisdiction's laws or foreign laws)?

In principle, Luxembourg law does not require the sale of receivables to be governed by the same law as the law governing the receivables given that, in accordance with the provisions of the Rome I Regulation, the parties are free to choose the governing law of the transfer agreement, which will determine the relation between the assignor and the assignee. However, the law governing the receivables will, pursuant to article 14 of the Rome I Regulation, among others, determine: (i) the assignability of the receivables; (ii) the relationship between the assignee and the obligor; (iii) the conditions under which the assignment can be invoked against the obligor; and (iv) whether payment by the obligor shall have the effect of discharging the obligor's obligations.

3.2 Example 1: If (a) the seller and the obligor are located in your jurisdiction, (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of your jurisdiction to govern the receivables purchase agreement, and (e) the sale complies with the requirements of your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

A court in Luxembourg will recognise the sale of receivables as being effective against the seller, the obligor and other third parties (such as the creditors of the seller) provided that the sale of receivables is compliant with Luxembourg law. As per the effectiveness of such sale against insolvency administrators appointed with respect to the seller, it has to be highlighted that, under Luxembourg law, an insolvency administrator is not considered a third party and may, under certain circumstances, challenge the effectiveness of the sale of the receivables.

In the event that the receivables are sold by or to a Luxembourg securitisation vehicle governed by the Luxembourg Law dated 22 March 2004 on securitisation, as amended for the last time by the Luxembourg Law dated 15 July 2024, applicable as

of 22 July 2024 (the Securitisation Law), pursuant to article 55 of the Securitisation Law, such sale will become effective between the parties and against third parties as from the moment the assignment is agreed, unless the contrary is provided for in such agreement.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

Assuming the provisions of the Rome I Regulation are applicable, the sale of receivables is effective against the seller, the purchaser and the obligor. However, it is not clear, under the Rome I Regulation, which legal provisions determine the effectiveness of a transfer of receivables against third parties other than the obligor. Luxembourg conflict-of-law rules would generally point to the law of the country where the obligor is located and hence the formalities provided by the relevant foreign law for effectiveness against third parties would need to be analysed on a case-by-case basis.

If the receivables were assigned to a Luxembourg securitisation vehicle governed by the Securitisation Law, article 58 of that law provides that "the law governing the assigned claim determines the assignability of such claim, the relationship between the assignee and the debtor, the conditions under which the assignment is effective against the debtor".

As per the effectiveness of such sale against insolvency administrators appointed with respect to the seller, please refer to the answer to question 3.2 above.

3.4 Example 3: If (a) the seller is located in your jurisdiction but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with your jurisdiction's own sale requirements?

A court in Luxembourg will recognise the receivables purchase agreement as being effective against the seller – without the need to comply with Luxembourg's own sale requirements – assuming that the chosen applicable law to the receivables purchase agreement is compliant with the relevant provisions of the Rome I Regulation, unless the application of the provisions of foreign law would be manifestly incompatible with Luxembourg public policy provisions as provided by article 3(3) of the Rome I Regulation.

As per the effectiveness of the receivables purchase agreement against third parties and/or insolvency administrators, please refer to the answers to questions 3.2 and 3.3 above.

3.5 Example 4: If (a) the obligor is located in your jurisdiction but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in your jurisdiction recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with your jurisdiction's own sale requirements?

With respect to the effectiveness of the receivables purchase agreement against the obligor, a Luxembourg court will recognise the receivables purchase agreement as being effective against the obligor pursuant to article 14(2) of the Rome I Regulation, which provides that the "law governing the assigned or subrogated claim determines the conditions under which the assignment can be invoked against the obligor".

With respect to the effectiveness of the receivables purchase agreement against third parties, a Luxembourg court will tend to designate the law of the country where the obligor has its seat (by application of Luxembourg conflict-of-law rules, which would generally point to the law of the country where the obligor is located). Hence, if the seat of the obligor is located in Luxembourg, the receivables purchase agreement will be effective and binding against third parties, if the obligor has been notified of the transfer of receivables in accordance with article 1690 of the Luxembourg Civil Code.

As per the effectiveness of the receivables purchase agreement against insolvency administrators, please refer to the answer to question 3.2 above.

3.6 Example 5: If (a) the seller is located in your jurisdiction (irrespective of the obligor's location), (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in your jurisdiction and any third party creditor or insolvency administrator of any such obligor)?

If the obligor has its seat in a foreign country, please refer to the answer to question 3.4 above. If the obligor has its seat in Luxembourg, please refer to the answer to question 3.5 above.

4 Asset Sales

4.1 Sale Methods Generally. In your jurisdiction what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

Under Luxembourg law, a receivable can be transferred by way of assignment, subrogation or novation.

All rights and obligations on the receivables may be assigned by a seller to a purchaser pursuant to articles 1689 *et seq.* of the Luxembourg Civil Code. The purchaser will therefore become the legal owner of the receivables so transferred. Such transfer of the receivable should then be notified to the obligor in accordance with article 1690 of the Luxembourg Civil Code.

Pursuant to articles 1249 *et seq.* of the Luxembourg Civil Code, receivables may also be transferred by way of contractual subrogation, i.e., a third party will pay to the original creditor the amount owed by the obligor and will then be subrogated to all rights and actions the original creditor could have exercised against the obligor prior to the payment by the third party.

Also, pursuant to articles 1271 *et seq.* of the Luxembourg Civil Code, receivables may be transferred by way of novation, i.e., all parties must consent that a new creditor will substitute the original creditor and assume its obligations under a new agreement made between the new creditor and the obligor.

It has to be noted that, pursuant to article 1278 of the Luxembourg Civil Code, any security interests (such as privileges or mortgages) attached to a former (extinct) claim, lapse by virtue of the novation, unless the creditor has explicitly reserved them to subsist.

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

The perfection of the sale of receivables by way of assignment requires the notification of the obligor pursuant to article 1690 of the Luxembourg Civil Code. Prior to the notification, and provided the obligor is not aware of the assignment, the obligor will be discharged while making payments to the seller and the sale will not be enforceable against any subsequent purchasers provided that they are acting in good faith.

The formalities to be observed for perfection of a transfer of receivables by way of subrogation may vary depending on the context and should be analysed on the basis of the relevant facts. A notification to the debtor is, however, strongly recommended.

If the sale of receivables by way of assignment occurs as a transfer of title by way of security (*transfert de propriété à titre de garantie*) governed by the Law of 5 August 2005 on financial collateral arrangements, as amended (the Law on Financial Collateral), the assignment is perfected when the seller and purchaser have executed the transfer agreement. Hence, for perfection purposes, a notification of the transfer to the obligor is not required. However, provided the obligor is not aware of the assignment, the obligor will be discharged while making payments to the seller.

In the event that the purchaser is a securitisation vehicle, governed by the Securitisation Law, and provided both the seller and the obligor have their seat in Luxembourg, article 55 of the Securitisation Law provides that the assignment of the receivables is perfected, becoming effective between the parties and against third parties when the seller and purchaser have executed the transfer agreement, unless otherwise provided for in the relevant transfer agreement. Hence, for perfection purposes, a notification of the transfer to the obligor is not required. However, provided the obligor is not aware of the assignment, the obligor will be discharged while making payments to the seller.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

Promissory notes and bills of exchange. Promissory notes (*billets à ordre*) and bills of exchange (*lettre de change*) are commercial papers (*effets de commerce*), the transfers of which are regulated by the Law of 8 January 1962 relating to promissory notes and bills of exchange, as amended. Pursuant to articles 11 *et seq.* of that law, promissory notes are transferred through endorsement (*endossement*) by means of physical delivery.

Consumer loans. Pursuant to article L. 224-18 of the Consumer Code, the assignment of a consumer loan to a third party must be notified to the contracting consumer, except where the original lender, by agreement with the assignee, continues to service the credit *vis-à-vis* the consumer. Consequently, in the first scenario, if the assignment has not been notified to the consumer, all payments made by the consumer toward the original lender are valid, as the original lender remains the sole financial counterparty of the consumer and not the purchaser.

Mortgage loans. Mortgages over real estate and other assets must be (i) formalised in a notarial deed passed in the presence of two notaries or one notary and two witnesses following article 2127 of the Luxembourg Civil Code, and (ii) registered with the appropriate mortgage register. There are no specific provisions under Luxembourg law dealing with the perfection requirements applying to the transfer of a mortgage as accessory. However, following the general rule provided by article 1692 of the Luxembourg Civil Code, which applies to accessory security in Luxembourg, the transfer of receivables includes the transfer of its accessory rights, such as a mortgage. Therefore, by transferring the mortgage loan to the transferee, the mortgage will, by operation of law, automatically be transferred to the transferee and hence, no specific provisions under Luxembourg law require the assignment of the mortgage to be registered in the mortgage register, to be enforceable against third parties. Registration of the mortgage may thus be done at any time before the mortgage lapses or is enforced. Pursuant to article 2154 of the Luxembourg Civil Code, the registration of the mortgage is valid and enforceable against third parties for 10 years and renewable for unlimited 10-year periods, provided that the underlying loan for which the mortgage was created is not extinguished and the 10-year term has not expired. In the absence of such renewal in due time, the security will no longer be enforceable and the secured creditor will lose its preferential rank over such immovable property.

Marketable debt securities. According to the provisions of the Law of 10 August 1915 on commercial companies, as amended (the 1915 Law), the transfer of debt securities in bearer form is effected by means of physical delivery from the transferor to the transferee without any further formalities, whereas the transfer of the debt securities in registered form must be recorded in the relevant register and be notified to the obligor in accordance with article 1690 of the Luxembourg Civil Code. The transfer of registered debt securities held on an account within the system of a securities depositary will be carried out by matching instructions from the transferor and the transferee to the securities depositary, pursuant to which the securities depositary will transfer the purchase price to the account of the transferor and the debt securities to the account of the transferee.

Debt securities may also be issued in dematerialised form and are transferred by book-entry transfer between the relevant securities accounts.

Tokenisation of debt securities. The Law of 1 March 2019 (the Blockchain Law I) established that a security token held via distributed ledger technology (DLT) such as blockchain qualifies as a security and satisfies the criteria of being a transferable and negotiable instrument. Similarly to securities cleared via

clearing systems, the Blockchain Law I recognises that transfers of securities are perfected by registration in the relevant account held on a blockchain. In addition to the Blockchain Law I, the Law of 22 January 2021 (the Blockchain Law II) brought further innovation and bridged a gap with respect to the regulation of dematerialised securities in Luxembourg by allowing investment firms and credit institutions to hold and manage securities issuance accounts via secured electronic registration systems such as DLT (e.g., blockchain) and databases. Securitisation vehicles governed by the Securitisation Law are, in principle, able to issue security tokens in accordance with the Blockchain Law I and the Blockchain Law II.

Moreover, the Law of 15 March 2023 (the Blockchain Law III) followed in the footsteps of the Blockchain Law I and the Blockchain Law II, aiming to further ensure a principle of technological neutrality by transposing, among others, Regulation (EU) 2022/858 (the EU DLT Pilot Regime) into national law. The Blockchain Law III, among others, increased legal certainty for the use of securities registered using DLT as collateral, by amending the definition of financial instruments under the Law on Financial Collateral and thereby clarifying that the financial instruments that may be used as collateral under the Law on Financial Collateral also include book-entry instruments that are registered or existing in securities accounts maintained in or through secure electronic recording devices, including distributed electronic registers or databases.

Additionally, the Law of 19 December 2025 (the Blockchain Law IV) introduces the possibility of appointing a monitoring agent for securities issuance. This agent will leverage DLT to manage the issuance account, oversee the chain of title for securities, and reconcile issued securities. On 25 June 2025, the European Securities and Markets Authority (ESMA) published a report on the application of the EU DLT Pilot Regime. The report includes recommendations to enhance the attractiveness of the regime for market participants, proposes making the regime permanent, and suggests introducing greater flexibility in regulatory thresholds and eligible assets based on the risk profile of each business. The European Commission is expected to submit its own report to the European Parliament and the Council, determining whether the EU DLT Pilot Regime should be extended, amended, or converted into a permanent regulation.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

As set out above, the sale of receivables must, in principle, be notified by the seller or the purchaser to the obligor in order to be perfected. In any case, if the obligor is not aware of the assignment, the obligor will be discharged while making payments to the seller. The obligor's consent to the assignment is not required provided that the agreement does not contain a clause preventing the seller from transferring the receivables. If the seller, despite such a clause in the agreement, assigns the receivables to the purchaser, the purchaser is, from a Luxembourg law perspective, likely not to be bound by this clause except if the purchaser has accepted the terms of the agreement.

If the purchaser of the receivables is a securitisation vehicle governed by the Securitisation Law and the agreement between the seller and the obligor prevents an assignment of the receivables, following article 57 of the Securitisation Law, the assignment will not be enforceable against the assigned obligor, unless (i) the obligor has agreed thereto, (ii) the assignee legitimately ignored such non-compliance, or (iii) the assignment relates to a monetary claim (*créance de somme d'argent*).

Provided that the conditions for a set-off under articles 1289 *et seq.* of the Luxembourg Civil Code are satisfied at the time of the perfection of the assignment, the obligor may set off its debt against obligations owed by the seller to the obligor even after a notification of the assignment.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings have commenced against the obligor or the seller? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

There are no particular rules that apply to the form of notice and the manner in which the notice is delivered to the obligor. Pursuant to article 1129 of the Luxembourg Civil Code, only receivables that are determined or determinable at the time of the sale can be the subject of an assignment, hence the notice can extend to future receivables provided the future receivables are determined or determinable.

In principle, the notice can be delivered to the obligor after the sale of the receivables and after insolvency proceedings have been commenced against the seller. However, the notification of the sale to the obligor after insolvency proceedings have been commenced against the seller would not be binding against third parties, including the insolvency administrator appointed in respect of the seller.

If the purchaser of the receivables is a securitisation vehicle, then article 55(2) of the Securitisation Law, which provides that "a future receivable can be assigned to a securitisation undertaking provided that it can be identified as being part of the assignment at the time it comes into existence or at any other time agreed between the parties", will be applicable to such a case.

4.6 Restrictions on Assignment – General Interpretation. Will a restriction in a receivables contract to the effect that "None of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says "This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights)?

The assessment of the above depends on the governing law, the specific content and the purpose of the agreement made

between the seller and the obligor and must therefore be analysed on a case-by-case basis. Among others, it needs to be analysed whether the purchaser of the receivables will replace the seller in the contractual relationship with the obligor as a consequence of the assignment.

Depending on the type of contract and the main contractual obligations agreed between the parties, a restriction on assignment as regards the agreement as a whole could, from a purely Luxembourg law perspective, not necessarily be construed as requiring the consent of the obligor with respect to the transfer of receivables by the seller to the purchaser provided the receivables could qualify as specific rights and obligations, which are separate from the agreement as a whole.

Conversely, a restriction on assignment as regards the rights and obligations under the agreement would, from a purely Luxembourg law perspective, generally be construed as prohibiting a transfer of receivables from the seller to the purchaser given that the rights and obligations deriving from the receivables qualify as rights and obligations under the agreement.

If a restriction on assignment refers to the sole obligations of a seller, it is not likely to request the obligor's consent in the event of an assignment of rights.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or "seller's rights" under the receivables contract, are such restrictions generally enforceable in your jurisdiction? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If your jurisdiction recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

As regards the enforceability of clauses in an agreement restricting the assignment of receivables, please see the answer to question 4.4 above. Provided the obligor has suffered damages, the seller and the purchaser (if the purchaser is not acting in good faith) could, in principle, be held liable for breach of contract or tort.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

The transfer agreement does not need to specifically identify each of the receivables. However, the assigned receivables must be determined or determinable at the time of the sale.

4.9 Recharacterisation Risk. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or is there a risk that the transaction could be characterised by a court as a loan with (or without) security? If recharacterisation risk exists, what characteristics of the transaction might prevent the transfer from being treated as an outright sale? Among other things, to what extent may the seller retain any of the following without jeopardising treatment as an outright sale: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; (d) a right of repurchase/redemption; (e) a right to the residual profits within the purchaser; or (f) any other term?

In principle, a Luxembourg court will consider the economic characteristics of an agreement and the common interest of the parties, and not rely *per se* on the denomination of the transaction given by the parties.

Unless a Luxembourg court, based on the factual elements of a transaction, takes the view that it was the intention of the parties to transfer the receivables for security purposes rather than to achieve a true sale and despite the seller retaining (i) the credit risk, (ii) the interest risk, (iii) the control of collections of receivables, or (iv) a repurchase/redemption right in relation to the receivables, it is unlikely that a Luxembourg court would, provided the sale of receivables has been duly perfected, recharacterise the transaction as a secured loan, even though this has not yet been tested in court.

Pursuant to article 56(1) of the Securitisation Law, a claim assigned to a securitisation vehicle becomes part of its property as from the date on which the assignment becomes effective, notwithstanding (i) any undertaking by the securitisation vehicle to reassign the claim at a later date, and (ii) that the assignment can be recharacterised on grounds relating to the existence of such undertaking. Furthermore, the securitisation vehicle may entrust the assignor or a third party with the collection of receivables or with any other task relating to their management pursuant to article 59 of the Securitisation Law.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller's insolvency?

The seller may agree to a continuous sale of receivables provided the receivables are determined or determinable. It is, however, recommended to notify such sale to the obligors for enforceability purposes.

As per the effectiveness of the sale of receivables following the seller's insolvency, please refer to the answers to questions 6.1 and 6.3 below.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to *versus* after the seller's insolvency?

In principle, a sale of future receivables is possible under Luxembourg law, provided they are determined or determinable and that the sale has been notified to the obligor(s).

The Securitisation Law (under article 55 paragraphs (2) and (3)) expressly allows the assignment of future receivables, and a securitisation vehicle can assert the assignment against third parties from the time of the agreement with the seller on the effective assignment of future receivables, which

applies notwithstanding the opening of insolvency proceedings against the seller prior to the date on which the receivables come into existence.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

The assignment of the receivables triggers, from a Luxembourg law perspective, the transfer of all rights and obligations incidental to the assigned receivables in favour of the purchaser. Thus, all accessory security interests (provided they are governed by Luxembourg law) securing the obligations under the assigned receivables are transferred, by operation of law, to the purchaser and are enforceable by the purchaser against third parties.

The Securitisation Law (under article 56 paragraph (2)) explicitly provides that (i) the assignment of receivables entails the transfer of the guarantees and security interests securing such receivables, and (ii) no further formalities are requested under Luxembourg law in this respect.

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor's set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor's set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

Legal set-off arises automatically and by operation of law where there are reciprocal claims between the parties, which are certain, due and payable. Provided the receivables contract does not contain a waiver as regards the set-off rights of the obligor against the seller, the notification of the transfer of receivables by the seller to the obligor does not trigger the termination of the obligor's set-off rights. As a result, provided the conditions for a legal set-off are satisfied at the time of the perfection of the assignment, the obligor may set off its debt against obligations owed by the seller to the obligor even after a notification of the assignment.

Provided that: (i) the conditions for a set-off were not satisfied at the time of the perfection of the assignment (i.e., the scenario set out in the previous paragraph does not occur and the notification of the transfer of receivables by the seller terminates the obligor's set-off rights); (ii) the receivables contract does not contain a waiver as regards the set-off rights of the obligor against the seller; and (iii) the obligor has suffered damages, the seller and the purchaser (if the purchaser is not acting in good faith) could, in principle, be held liable for breach of contract or tort.

4.14 Profit Extraction. What methods are typically used in your jurisdiction to extract residual profits from the purchaser?

In principle, Luxembourg law-governed securitisation vehicles do not generate profits due to their passive nature given that all income deriving from the underlying assets will be paid to the investors holding the securities or, as the case may be, to the shareholder(s) of the securitisation vehicle or the originator of the underlying assets.

5 Security Issues

5.1 Back-up Security. Is it customary in your jurisdiction to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected (see question 4.9 above)?

Given that, in general, it can be ascertained that the sale of receivables has been perfected, it is not customary from a Luxembourg law perspective to take a back-up security over the seller's ownership interest in the receivables. However, the taking of additional security is, of course, possible.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your jurisdiction, and for such security interest to be perfected?

Please see the answers to questions 5.1 above and 5.3 below.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in your jurisdiction to grant and perfect a security interest in purchased receivables governed by the laws of your jurisdiction and the related security?

The Law on Financial Collateral typically governs agreements creating security interests over receivables.

In practice, security interests over receivables are either created by a pledge agreement or by a transfer of title by way of security agreement, each governed by the provisions of the Law on Financial Collateral. In addition, the law on professional payment guarantees dated 10 July 2020 (the Professional Guarantee Law) introduced a new form of flexible professional payment guarantee, which may be adapted to the specific transaction, with the provisions agreed by the parties receiving full recognition under Luxembourg law, without risk of recharacterisation. The Professional Guarantee Law was introduced specifically for securitisation and structured finance transactions.

To perfect a pledge over receivables, the purchaser acting as pledgor must be dispossessed with respect to the pledged assets, which can typically and automatically be achieved by the conclusion of the pledge over receivables agreement between the purchaser acting as pledgor and the pledgee. When executed by the purchaser and the secured parties, the pledge over receivables has been perfected against the debtor and third parties. However, the obligor of the receivables will be discharged while making payments to the purchaser unless the obligor has been notified of the pledge over receivables to the secured parties.

With respect to a transfer of title by way of security, the purchaser transfers the ownership in relation to the receivables to the secured parties until the secured obligations have been discharged, triggering the obligation of the secured parties to retransfer the receivables to the purchaser. When executed by the purchaser and the secured parties, the transfer agreement has been perfected. However, the obligor of the receivables

will be discharged while making payments to the purchaser unless the obligor has been notified of the transfer of the title of the receivables to the secured parties.

In accordance with the Securitisation Law, a securitisation vehicle may grant any security interest or pledge its assets to cover all commitments relating to the securitisation transaction, i.e., the possibility of providing collateral to other parties is not limited to secure only the claims of direct creditors and investors.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of your jurisdiction, and that security interest is valid and perfected under the laws of the purchaser's jurisdiction, will the security be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

The creation, perfection and enforcement of a security interest over receivables that are, or are deemed to be, located in Luxembourg are, pursuant to applicable Luxembourg conflict-of-law rules, governed by Luxembourg law.

Hence, even if the security interest over Luxembourg receivables were to be validly created and perfected pursuant to the applicable law of the country where the purchaser has its seat, said security interest will, from a Luxembourg conflict-of-law perspective, only be validly created, perfected and enforceable, if the applicable Luxembourg rules are complied with.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

Security interests over claims arising under insurance policies, mortgage loans or consumer loans are granted either in the form of a pledge or a transfer of title by way of security and, insofar as regards their perfection, the answer to question 5.3 above is applicable.

A security interest over a promissory note is perfected by way of endorsement indicating that the security has been transferred for security purposes.

A security interest over debt securities in bearer form is perfected by the physical delivery of the debt securities to the pledgee or, as the case may be, depositary acting for the pledgee. A security interest over debt securities in registered form is perfected by inscription of the pledge in the register held with the issuer of the debt securities. A security interest over debt securities held in an account within the system of a securities depositary is perfected by, among others: (i) the entry into the pledge agreement made between the pledgor, the pledgee and the securities depositary or between the pledgor and the pledgee with notification to the securities depositary, provided the latter will follow the pledgee's instructions relating to the debt securities; (ii) the registration of the debt securities in an account opened in the name of the pledgee; or (iii) the indication in the books of the securities depositary that the debt securities are pledged, provided the debt securities are held in an account opened in the name of the pledgor.

A transfer of title by way of security in relation to registered debt securities is perfected by: (i) the transfer of the debt securities to an account opened in the name of the transferee (or if the debt securities are held in an account opened in the name of the transferor (book-entry securities)); and/or (ii) the indication in the books of the account bank that legal title to the debt securities has been transferred to the transferee.

5.6 Trusts. Does your jurisdiction recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets (so that they are not part of the seller's insolvency estate) until turned over to the purchaser?

Pursuant to the Law of 27 July 2003 on trusts and fiduciary agreements, as amended (the Fiduciary Law), foreign trusts are recognised in Luxembourg to the extent that they are authorised by the law of the jurisdiction in which they are created.

Furthermore, according to the Fiduciary Law, a Luxembourg fiduciary may enter into a fiduciary agreement with a *fiduciant*, pursuant to which the fiduciary becomes the owner of a certain pool of assets forming the fiduciary estate, which are, even in an insolvency scenario, segregated from the assets of the fiduciary and held off-balance.

5.7 Bank Accounts. Does your jurisdiction recognise escrow accounts? Can security be taken over a bank account located in your jurisdiction? If so, what is the typical method? Would courts in your jurisdiction recognise a foreign law grant of security taken over a bank account located in your jurisdiction?

Luxembourg law recognises the mechanism of escrow accounts, although this mechanism does not constitute a security *stricto sensu* and is not covered by the Law on Financial Collateral.

Security interests may be created over the balance standing to the credit of a specific bank account, which typically take the form of a pledge governed by the Law on Financial Collateral.

If, pursuant to Luxembourg conflict-of-law rules, an account is located, or would be deemed to be located, in Luxembourg, the relevant Luxembourg provisions will apply regarding the creation, perfection and enforceability of a security interest over such account. Hence, if the foreign law would not provide for the same rules, a Luxembourg court will not recognise the foreign law security interest over a Luxembourg account and would apply the relevant Luxembourg rules as regards the creation, perfection and enforceability of a security interest over an account located in Luxembourg.

Fiduciary mechanisms can also be used for the purpose of an escrow arrangement.

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

If a pledge has been granted over a bank account, upon the occurrence of the agreed event of default, the secured party would enforce the account pledge. As a result, the account's bank would block the pledged account and the pledgor would have no further access to the account. Hence, the pledgee controls, upon the occurrence of an event of default, the pledged account (unless the parties have agreed on a different mechanism in the pledge agreement regarding access to the account

after an event of default has occurred) until the secured obligations have been fully discharged. Following the discharge of the secured obligations, the pledgee has the obligation to unblock the account and to release the pledge.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

Pursuant to the provisions of the Law on Financial Collateral, the owner of the account (typically the pledgor) may have access to the funds in the pledged account until enforcement of the pledge, without affecting the security.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will your jurisdiction's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? If so, what generally is the length of that stay of action? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

Provided the sale of the receivables cannot be challenged by the insolvency administrator appointed with respect to the seller, i.e.: (i) the sale of receivables has been perfected in connection with the applicable law; (ii) the sale has not been executed during the pre-bankruptcy suspect period, which is a period of six months and 10 days preceding the opening of insolvency proceedings against the seller; or (iii) the receivables were not transferred under value, there will be no stay of action preventing the purchaser from collecting, transferring or otherwise exercising ownership rights with respect to the receivables.

In addition, the transfer of receivables, provided that provisions of the Law on Financial Collateral are applicable to such transfer, may only be set aside in case of manifest fraud. The provisions governing insolvency proceedings under the Law on Financial Collateral apply to both European Economic Area (EEA) and non-EEA countries, following a decision of the Luxembourg Supreme Court dated 19 December 2024.

6.2 Insolvency Official's Powers. If there is no stay of action, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of its ownership rights over the receivables (by means of injunction, stay order or other action)?

The insolvency administrator could prohibit the purchaser's exercise of rights by way of summary proceedings while challenging the validity of the transfer or the perfection of the transfer of the receivables.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the seller's insolvency proceedings? What are the lengths of the "suspect" or "preference" periods in your jurisdiction for (a) transactions between unrelated parties, and (b) transactions between related parties? If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period? If a parent company of the seller guarantee's the performance by the seller of its obligations under contracts with the purchaser, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period?

As stated in the answer to question 6.1 above, the insolvency administrator could challenge the validity of the transfer of receivables, if the transfer was executed during the pre-bankruptcy suspect period, which is a period of six months and 10 days preceding the opening of insolvency proceedings against the seller.

As regards the length of the pre-bankruptcy suspect period, there is no difference with respect to transactions carried out between related or unrelated parties. However, if the activities and assets of the seller and the purchaser are commingled and hence could be seen as one common estate, the insolvency administrator may, depending on the factual circumstances, extend to the purchaser insolvency proceedings that were initially commenced against the seller.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding? If the purchaser is owned by the seller or by an affiliate of the seller, does that affect the consolidation analysis?

In principle, and subject to what is stated in the answer to question 6.3 above, the insolvency administrator could not, in the context of an insolvency scenario, consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates.

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in your jurisdiction, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) sales of receivables that only come into existence after the commencement of such proceedings?

Provided the provisions of the Securitisation Law are applicable, a securitisation vehicle can assert the assignment of future receivables against third parties from the time of the agreement with the seller on the effective assignment of future receivables, which applies notwithstanding the opening of insolvency proceedings against the seller prior to the date on which the receivables come into existence.

6.6 Effect of Limited Recourse Provisions. If a debtor's contract contains a limited recourse provision (see question 7.4 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

There is little published case law and legal literature as regards limited recourse provisions under Luxembourg law. As a consequence, Luxembourg law would tend to turn to Belgian legal doctrine and case law, which, as we understand, admits, in principle, the validity and enforceability of limited recourse provisions, provided the *pari passu* treatment of creditors is not violated and the limited recourse provisions are not designed to unfairly impair the rights of certain creditors to the detriment of one or more creditors.

Provided that the contractual limited recourse provisions in the documentation, to which the debtor and the creditor are a party, are effective and lawful under Luxembourg law (when the debtor is a securitisation undertaking under the Securitisation Law or a fiduciary within the meaning of the Fiduciary Law), the creditor should not, from a Luxembourg law perspective, have an interest to act (*intérêt à agir*) against the securitisation undertaking or the fiduciary beyond the available pool of assets to which its recourse is limited and, depending on the contractual mechanism embedded in the documentation, its claim should be extinguished once the relevant assets have been realised. As a result, the creditor should not be in a position to file a valid petition for bankruptcy against the securitisation undertaking or the fiduciary with the competent Luxembourg court on the basis of the balance of the outstanding debt, where the assets of the securitisation undertaking or the fiduciary prove to be insufficient to fully satisfy the claim of the creditor.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in your jurisdiction establishing a legal framework for securitisation transactions? If so, what are the basics? Is there a regulatory authority responsible for regulating securitisation transactions in your jurisdiction? Does your jurisdiction define what type of transaction constitutes a securitisation?

The Securitisation Law established a particular legal framework for securitisation transactions in Luxembourg. The Luxembourg Commission for the Supervision of the Financial Sector (*Commission de Surveillance du Secteur Financier* or CSSF) issued frequently asked questions on securitisation in Luxembourg on 23 October 2013 (the CSSF FAQ), which are generally used as guidance also for unregulated securitisations. In addition to the Securitisation Law, Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (the Securitisation Regulation) is directly applicable in Luxembourg. The update to the Securitisation Law in 2022 provides, among others, the following enhancements:

- The means of financing securitisation transactions are broadened, e.g., it is possible to finance a securitisation transaction: (i) by the issue of financial instruments (covering, unlike the previously used term "securities", as defined by reference to the Law on Financial Collateral, a broader field of instruments and being in line with the Securitisation Regulation, which does not require securitisation transactions to be financed by issuing securities); or (ii) through loans on an exclusive basis.
- The scope of possible collateral arrangements is widened by allowing a securitisation entity to grant collateral in favour of all parties involved in the securitisation transaction.
- Adjustments to the corporate governance of securitisation vehicles, including, but not limited to, additional corporate forms, a registration obligation for securitisation funds and rules on legal subordination.
- New possibilities for the active management of collateralised debt obligations (CDOs) and collateralised loan obligations (CLOs) and clarification of the ways in which securitised assets may be acquired.
- The legal subordination of different financial instruments is defined to align with general rules applicable to commercial companies and mutual funds and incorporate the subordination principles in accordance with market practice. This leads to the following subordination from which the parties to a securitisation transaction can also derogate: (i) shares, fund units, partnership interests; (ii) beneficiary shares; (iii) non-fixed income debt instruments; and (iv) fixed income debt instruments.

The most recent update to the Securitisation Law in 2024 provides amendments concerning the transfer of non-performing loans (the NPL Law) and implements Directive (EU) 2021/2167 of 24 November 2021 on credit servicers and credit purchasers (the NPL Directive), setting out additional requirements for credit servicers of non-performing loans. Please see the answer to question 8.7 for a review of such amendment.

The European Commission released a legislative proposal on 17 June 2025 aiming to revive the EU securitisation framework by reducing operational costs and simplified due diligence and transparency requirements. Please see the answer to question 8.7 for a detailed summary on the proposal.

In accordance with the Securitisation Law, a securitisation is a transaction by which a securitisation vehicle: (i) acquires or assumes, directly or through another vehicle, 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 (ii) issues financial instruments or by contracting, in whole or in part, any form of borrowing, whose value or yield depends on such risks. Before the recent update of the Securitisation Law, securitisation vehicles were only allowed to issue securities – typically being notes, but also including the possibility of issuing shares or warrants. However, the term "securities" was not clearly defined and it was debatable whether certain types of instruments would qualify as such, particularly those that are governed by foreign laws. Further, the possibility of financing securitisation transactions by loans was excluded in most cases by the CSSF FAQ – financing by loans was possible only on a transitional or ancillary basis for liquidity or warehousing purposes.

Under the Securitisation Law, almost all classes of assets are capable of being securitised. Although main asset classes that are securitised in Luxembourg are bonds, repackaged securities and trade or lease receivables, transactions involving physical assets are also permitted if their securitisation serves to refinance and provide liquidity. The Securitisation Regulation imposes stricter criteria than the Securitisation Law, limiting its application to transactions that are based solely on credit risk.

The securitisation may be completed either: (i) on a true sale basis, whereas the securitisation vehicle will acquire full legal title in relation to the underlying assets; or (ii) by the synthetic

transfer of the risk pertaining to the underlying assets through the use of derivative instruments. To finance the transfer of risk, the securitisation vehicle must, pursuant to the Securitisation Law, either: (i) issue financial instruments, including specifically, e.g., loan notes, payment instruments and all other instruments evidencing ownership rights, claim rights or securities, which can be freely transferred by assignment or physical delivery and which are subscribed by the investors; or (ii) enter into loans or any other form of borrowing, either on an exclusive basis or in addition to the issuance of financial instruments. With the issue proceeds derived from the financial instruments' issue or the amounts received under any form of borrowing, the securitisation vehicle will acquire the risks pertaining to the underlying assets.

As per the regulatory authority responsible for regulating securitisation transactions in Luxembourg, please see the answer to question 7.2 below.

Pursuant to article 1(1) of the Securitisation Law, a securitisation transaction is defined as "any 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 financial instruments or by contracting, in whole or in part, any form of borrowing, whose value or yield depends on such risks".

7.2 Securitisation Entities. Does your jurisdiction have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

The Securitisation Law allows for two types of securitisation entities, which may be set up in the form of a company or a fund.

A securitisation fund (*fonds de titrisation*) does not have legal personality, is managed by a management company and consists of one or more co-ownerships (*copropriétés*) or one or more fiduciary estates. The management regulations expressly specify whether the fund is subject to the provisions of the Luxembourg Civil Code on co-ownership or the rules on trusts and fiduciary contracts set out in the Fiduciary Law, which allow for the legal separation of the fiduciary assets from the trustee's assets.

While previously only the management company of a securitisation fund needed to be registered with the Luxembourg trade and companies register, pursuant to the update in 2022 of the Securitisation Law, the securitisation fund will also need to be registered. This allows a securitisation fund to obtain a Luxembourg trade and companies register identification number, which is sometimes required for administrative purposes or public disclosure purposes and is also in line with the requirements for investment funds.

Pursuant to article 2(2) g) of the Law of 12 July 2013 on alternative investment fund managers, as amended (the AIFM Law), the AIFM Law, in principle, does not apply to securitisation special purpose vehicles. As a result, a securitisation fund is not a fund within the meaning of the AIFM Law and is as such not regulated by the CSSF. It may issue debt securities in accordance with article 9 of the Securitisation Law.

In most cases, the securitisation vehicle is incorporated in accordance with the general provisions of the 1915 Law, whereas the articles of incorporation of the securitisation vehicle are expressly made subject to the provisions of the Securitisation Law.

A securitisation company can be set up as a public limited liability company (*société anonyme*), a corporate partnership limited by shares (*société en commandite par actions*), a private limited liability company (*société à responsabilité limitée*) or a co-operative company organised as a public limited company (*société coopérative organisée comme une société anonyme*). In addition to the aforementioned corporate forms, following the update in 2022 of the Securitisation Law, partnership structures (i.e., an unlimited company (*société en nom collectif*), a common limited partnership (*société en commandite simple*), a special limited partnership (*société en commandite spéciale*), and a simplified joint-stock company (*société par actions simplifiée*)) can also now be used as securitisation vehicles.

Luxembourg securitisation vehicles are, in principle, unregulated entities not subject to any authorisation or prudential supervision by the CSSF unless they issue financial instruments to the public on a continuous basis. In such a case, their activity must be authorised by the CSSF prior to the first issue of financial instruments. However, the securitisation vehicle may be exempt from the requirement to be licensed by the CSSF, provided it does not issue more than three series of financial instruments per year to the public. Pursuant to the recent update of the Securitisation Law, financial instruments are deemed to be offered to the public if all the following conditions are met: (i) such issue is not directed at professional clients; (ii) the financial instrument has a denomination of less than EUR 100,000; and (iii) it is not distributed by means of a private placement.

If a securitisation vehicle is a regulated entity, the CSSF must (i) approve the directors of the vehicle and hence the directors will need to evidence a certain track record and experience within the field of securitisation, and (ii) examine whether its direct or indirect shareholders are in a position to exercise a significant influence over the conduct of the business of such securitisation vehicle, are of sufficiently good repute and have the experience or means required for the performance of their duties.

Currently, 27 securitisation vehicles have been registered on the official list of authorised securitisation vehicles held and published by the CSSF and are hence subject to the supervision of the CSSF.

7.3 Location and form of Securitisation Entities. Is it typical to establish the special purpose entity in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the special purpose entity in your jurisdiction? If offshore, where are special purpose entities typically located for securitisations in your jurisdiction? What are the forms that the special purpose entity would normally take in your jurisdiction and how would such entity usually be owned?

- Establishment of special purpose vehicles in Luxembourg and advantages to locating the special purpose entity in Luxembourg: Luxembourg is a well-known jurisdiction for the establishment of securitisation vehicles, which can benefit from the provisions of the Securitisation Law and the favourable tax regime applicable to securitisation vehicles in Luxembourg. In particular, the recent update of the Securitisation Law adds new tools that can be used in securitisation structures, in line with both European legislation and market practice in other EU jurisdictions and increasing the flexibility and legal certainty of the securitisation framework. However, the special purpose vehicle's shares are usually held by an offshore company for tax and insolvency remoteness reasons.

- Typical forms of the special purpose entities: Luxembourg securitisation vehicles are often set up as a public limited liability company, private limited liability company, or securitisation fund.
- Ownership of the special purpose entities: Luxembourg special purpose vehicles are usually owned by orphan entities for tax and insolvency remoteness purposes, such as a Dutch *stichting* (being a special type of Dutch trust foundation controlled by a board of directors). Such orphan entities are mainly used in order to isolate the obligations of the special purpose vehicle from those of the originator.

7.4 Limited-Recourse Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished?

Under the Securitisation Law, contractual limited recourse clauses are recognised (even if the relevant agreement or the terms and conditions of the notes are not governed by Luxembourg law) and will be upheld by Luxembourg courts. In addition, the Securitisation Law provides for a statutory ring-fencing mechanism, which can be established by the creation of compartments within the securitisation vehicle. The securitisation vehicle may allocate assets and liabilities to a specific compartment, and the creditors and investors of that specific compartment have no recourse to assets that are allocated to other compartments of the securitisation vehicle, i.e., each compartment forms a separate estate, the assets of which are segregated from those allocated to other compartments of the securitisation vehicle. The constitutional documents of the securitisation vehicle and the transaction documents entered into in relation to a specific securitisation transaction should always contain the appropriate limited recourse wording.

7.5 Non-Petition Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

Under the Securitisation Law, non-petition clauses are recognised (even if the relevant agreement or the terms and conditions of the notes are not governed by Luxembourg law) and will be upheld by Luxembourg courts. Hence, investors or creditors of the securitisation vehicle may waive their right to submit a petition for the commencement of insolvency proceedings against the securitisation vehicle.

The constitutional documents of the securitisation vehicle and the transaction documents entered into in relation to a specific securitisation transaction should always contain the appropriate non-petition wording.

7.6 Priority of Payments "Waterfall". Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

Under the Securitisation Law, subordination clauses are recognised (even if the relevant agreement or the terms and conditions of the notes are not governed by Luxembourg law) and will be upheld by Luxembourg courts. The constitutional documents of the securitisation vehicle and the transaction documents entered into in relation to a specific securitisation transaction should always contain the appropriate subordination wording.

In addition, rules on the legal ranking of different instruments were also introduced by the update in 2022 of the Securitisation Law. By way of example, shares/fund units rank junior to beneficiary shares, which in turn rank junior to debt securities issued by the securitisation vehicle. Such subordination rules are aligned with general rules applicable to commercial companies and mutual funds and incorporate the subordination principles in accordance with current market practice.

7.7 Independent Director. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

The enforceability of contractual provisions prohibiting the directors from taking specified actions (including commencing insolvency proceedings) without the affirmative vote of an independent director could be problematic from a Luxembourg perspective given that, in certain circumstances, the directors may have the legal obligation to make a filing for insolvency. However, the relevant articles of incorporation could provide that certain actions can only be validly taken with the affirmative vote of the independent director. The relevance of such a clause may be less important in the Luxembourg context, since a Luxembourg securitisation vehicle should be insolvency-remote.

7.8 Location of Purchaser. Is it typical to establish the purchaser in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the purchaser in your jurisdiction? If offshore, where are purchasers typically located for securitisations in your jurisdiction?

Luxembourg is a well-known jurisdiction for the establishment of securitisation vehicles, which can benefit from the provisions of the Securitisation Law. As regards the advantages to locating securitisation vehicles in Luxembourg, please refer to the answer to question 7.3 above.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in your jurisdiction, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in your jurisdiction? Does the answer to the preceding question change if the purchaser does business with more than one seller in your jurisdiction?

The purchaser will not be required to obtain a business licence in Luxembourg or an authorisation from the CSSF approving its

activity in connection with the provisions of the Luxembourg Law dated 5 April 1993 on the financial sector, as last amended by the Law of 3 July 2025 (the Financial Sector Law), only because the purchaser will purchase or collect receivables from one or more sellers having their seat in Luxembourg or enforce, as the case may be, the receivables in Luxembourg acquired from them.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third-party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

Assuming that Luxembourg law provisions apply to the seller, a debt collection activity carried out in Luxembourg requires, in principle, the prior authorisation of the CSSF pursuant to article 28-3 of the Financial Sector Law. However, a securitisation vehicle may entrust the seller or a third party with the collection of receivables pursuant to article 60 of the Securitisation Law. In such a scenario, the seller or the third party, acting as a servicer, does not need to apply for a CSSF licence under the Financial Sector Law.

In a true sale transaction, the purchaser, or, as the case may be, its representative, will appear in court with respect to any litigation in connection with the receivables given that the purchaser is the legal owner of the receivables.

8.3 Data Protection. Does your jurisdiction have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

The Law of 1 August 2018 on the organisation of the national data protection commission and the general data protection framework (the GDPR Law), implementing certain parts of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data (the GDPR), and the GDPR establish standards for the collection and processing of personal data, which restrict, among others, the use and dissemination of data about, or provided by, obligors to third parties and to entities having their seat in non-EU Member States. The person whose data will be processed has a right to information, a right to access the data, and a right to oppose any processing or communication of that data. The GDPR Law and GDPR only cover the collection and processing of personal data in relation to individual consumers.

On 17 June 2025, the European Commission proposed amendments to the Securitisation Regulation that aim to reduce the operational costs for issuers and investors by simplifying due diligence and transparency requirements, including reducing the mandatory data fields for public reporting templates by at least 35%. The proposal also removes the requirement for investors to verify certain information when the selling party is based and supervised in the EU, as competent authorities already oversee compliance. Furthermore, mandatory securitisation-specific due diligence requirements are suggested to be fully removed for regulated investors. This proposal is further supported by a Joint Opinion on the European Commission's proposal issued by the European Data Protection Board and European Data Protection Supervisor, suggesting an amendment of the GDPR aiming to decrease related administrative burden.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your jurisdiction? Briefly, what is required?

The Consumer Code provides rules that are binding on the purchaser of receivables arising under a consumer credit contract. In general, notification with respect to the transfer of the receivables to the obligor should be made by the seller (article L. 224-18(2) of the Consumer Code). However, a notification is not required if the seller continues to service the credit *vis-à-vis* the consumer. Further, pursuant to article L. 224-18(1) of the Consumer Code, the consumer retains the right to raise all defences and exceptions against the purchaser that it could have raised against the seller prior to the perfection of the transfer of the receivables.

8.5 Currency Restrictions. Does your jurisdiction have laws restricting the exchange of your jurisdiction's currency for other currencies or the making of payments in your jurisdiction's currency to persons outside the country?

Luxembourg does not have currency or exchange controls or central bank approval requirements restricting payments to entities located outside Luxembourg.

8.6 Risk Retention. Does your jurisdiction have laws or regulations relating to "risk retention"? How are securitisation transactions in your jurisdiction usually structured to satisfy those risk retention requirements?

The Securitisation Regulation, which has been applicable since 1 January 2019, applies to Luxembourg securitisation transactions (within the meaning of "securitisation" therein). The Securitisation Regulation provides that the originator, sponsor or original lender of a securitisation (as defined therein) shall retain, on an ongoing basis, a material net economic interest in the securitisation transaction of no less than 5%.

Notwithstanding the foregoing, for securitisations and the securities of which that were issued before 1 January 2019, credit institutions or investment firms acting as originator, sponsor or lender, and also when investing in securitisation transactions, will continue to apply article 405 of Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms (the Capital Requirements Regulation or CRR), referring to the retention of a material net economic interest measured at the origination, which, in any event, shall not be less than 5% of the nominal value of the securitisation position.

The risk retention requirements of the Securitisation Regulation and, for securities issued before 1 January 2019, the CRR are typically satisfied by having the originator, sponsor or original lender hold at least 5% of the outstanding principal balance of each class of securities (vertical slice) or 5% of the fair value of all the issued securities (horizontal slice).

Further, the European Banking Authority guidelines EBA/GL/2015/20 (the EBA Guidelines), to be read in conjunction with CSSF Circular No. 16/647, on limits on exposure to shadow banking entities that carry out bank-like activities outside a regulated framework (and developed in accordance with article 395(2) of the CRR), apply to all institutions subject to part four (Large Exposures) of the CRR, which shall comply with the

aggregate exposure limits or tighter individual limits set on exposures to shadow banking entities carrying out banking activities outside a regulated framework (including special purpose vehicles engaged in securitisation transactions).

8.7 Regulatory Developments. Have there been any regulatory developments in your jurisdiction which are likely to have a material impact on securitisation transactions in your jurisdiction?

PRIIPs Regulation

Regulation (EU) No. 1286/2014 on key information documents for packaged retail and insurance-based investment products (the PRIIPs Regulation) entered into force on 29 December 2014 and has applied since 1 January 2018. The PRIIPs Regulation requires that all packaged retail and insurance-based investment products (PRIIPs) manufacturers provide a key information document (the KID) to retail investors in order to enable retail investors to understand and compare the key features and risks of PRIIPs. Structured securities, e.g., mortgage-backed securities (MBS) or asset-backed securities (ABS), including financial instruments issued by special purpose vehicles, fall under the scope of the definition of PRIIPs. Hence, since 1 January 2018, any securitisation vehicle that issues debt securities falling under the scope of the PRIIPs Regulation must provide its potential retail investors with a KID according to the standard laid down in the PRIIPs Regulation.

Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing the PRIIPs Regulation lays down regulatory technical standards with regard to the presentation, content, review and revision of KIDs and the conditions for fulfilling the requirement to provide such documents, and has been applicable since 1 January 2018.

The Law of 17 April 2018 on KIDs for PRIIPs implementing the PRIIPs Regulation and modifying the amended Law of 17 December 2010 on undertakings for collective investment (the PRIIPs Law) entered into force on 23 April 2018 and designates the CSSF and the *Commissariat aux Assurances* (the CAA) as the competent supervisory authorities regarding supervision and compliance with the requirements of the PRIIPs Regulation.

The application of the PRIIPs Regulation to Luxembourg securitisation vehicles should be analysed on a case-by-case basis considering that most Luxembourg securitisation vehicles are unregulated entities, not subject to any authorisation or prudential supervision by the CSSF, and issue debt securities to institutional and professional investors rather than to retail investors.

Securitisation Regulation

On 28 December 2017, the Securitisation Regulation was published in the Official Journal of the European Union. The Securitisation Regulation lays down a general framework for securitisation, defines securitisation and establishes due diligence, risk retention and transparency requirements for parties involved in securitisations, criteria for credit granting, requirements for selling securitisations to retail clients, a ban on re-securitisation, requirements for securitisation vehicles as well as conditions and procedures for securitisation repositories.

The Securitisation Regulation also creates a specific framework for simple, transparent and standardised securitisation (STS) securitisation. The Securitisation Regulation first introduced the concept of STS securitisations in Luxembourg, providing a notification requirement to ESMA. While the first STS securitisation vehicle was issued in Luxembourg in March 2019, this number has rapidly increased. The European Commission's proposed amendments to the Securitisation Regulation further aim to enhance the homogeneity requirement for STS securitisations. Accordingly, pools composed of 70% small and medium-sized enterprise (SME) loans would be deemed homogenous, which is expected to simplify cross-border transactions and promote SME financing. Currently, to qualify as an STS securitisation, the underlying credit facility must consist exclusively of commercial loans that are either secured by immovable property located in the same jurisdiction or granted to obligors residing in the same jurisdiction. Such amendments would significantly increase flexibility and support SMEs within the EU.

Under the current EU Securitisation Regulation, only funded credit protection qualifies for STS on-balance-sheet (synthetic) securitisation if the protection provider does not fall within the limited list of eligible entities. The proposal introduces the possibility of unfunded guarantees provided by insurance and reinsurance undertakings, provided these entities meet certain solvency, creditworthiness and diversification criteria. This would expand the pool of eligible protection providers and thereby facilitate greater participation in the STS on-balance-sheet market.

The Securitisation Regulation came into force on 17 January 2018 and applies, subject to transitional provisions, as of 1 January 2019.

Commission Delegated Regulation (EU) 2018/990 of 10 April 2018, amending and supplementing Regulation (EU) 2017/1131 of the European Parliament and of the Council (of 14 June 2017 on money market funds) with regard to STS securitisations and asset-backed commercial papers (ABCPs), introduces requirements for assets received as part of reverse repurchase agreements and credit quality assessment methodologies (the 2018/990 Regulation). The 2018/990 Regulation has been applicable since 21 July 2018, with the exception of its article 1, which became applicable from 1 January 2019, and lays down requirements applicable to managers of money market funds that invest in securitisations or ABCPs such as, among others, criteria for quantifying credit risk, and the relative risk of default of the issuer and of the instrument.

On 17 June 2025, the European Commission released a legislative package proposing measures to revive the EU securitisation framework. The proposed amendments to the Securitisation Regulation aim to reduce the operational costs for issuers and investors by simplifying due diligence and transparency requirements, including reducing the mandatory data fields for public reporting templates by at least 35%. The proposal also eliminates the obligation for investors to verify specific information when the selling party is established and supervised within the EU, as compliance is already monitored by competent authorities. Furthermore, the proposal suggests removing mandatory securitisation-specific due diligence requirements for regulated investors altogether. This proposal is further supported by a Joint Opinion on the European Commission's proposal issued by the European Data Protection Board and European Data Protection Supervisor, suggesting an amendment of the GDPR aiming to decrease related administrative burden.

The proposal further places emphasis on STS securitisation, as previously outlined, and introduces amendments to the CRR, as detailed below.

CRR

The European Commission's legislative proposal introduces amendments to the capital requirements under the CRR. The proposed changes to the liquidity coverage ratio (LCR) would permit notes with lower credit ratings to be included in an

institution's total liquidity buffer, subject to relevant haircuts. Additionally, the amendments to the net stable funding ratio (NSFR) provide for the application of lower rates. These measures are expected to be advantageous for banks and insurance companies.

MiFIR

Amendments to MiFID II and Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFIR) were adopted by the European Council on 20 February 2024 and are currently in a transition period until 22 August 2026. These amendments aim to increase transparency by improving investors' access to market data on financial instruments and reduce the regulatory burden on market participants.

EU DLT Pilot Regime

On 25 June 2025, ESMA published a report on the application of the EU DLT Pilot Regime, recommending measures to increase its attractiveness for market participants and introduce greater flexibility in regulatory thresholds and eligible assets based on individual risk profiles. ESMA advocates for making the regime permanent. The European Commission is expected to submit its own report to the European Parliament and the Council, determining whether the EU DLT Pilot Regime should be extended, amended, or converted into a permanent regulation.

NPL Law

The NPL Law entered into force on 15 July 2024, implements the NPL Directive, and introduced significant amendments to the Securitisation Law and the Financial Sector Law. Notably, the NPL Law establishes the credit servicer as a new category of specialised professional of the financial sector (*Professionnel du Secteur Financier* or PFS), subject to authorisation and supervision by the CSSF. Credit servicing is now a regulated activity under the NPL Law, requiring licensing and compliance with regulatory requirements. Securitisation vehicles acquiring non-performing loans from originating banks are considered credit purchasers and fall within the scope of the NPL Law, unless they qualify as STS securitisations under the Securitisation Regulation. A securitisation vehicle acquiring non-performing loans granted to consumers must thus appoint a credit servicer and fulfil the licensing and regulatory requirements.

Prospectus Regulation

Regulation (EU) 2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, repealing Directive 2003/71/EC (the Prospectus Regulation), entered into force on 20 June 2017 and has been directly applicable since then. The Prospectus Regulation, together with the Law of 16 July 2019 on prospectuses for securities, exempt securities issued to the public with a total consideration of less than EUR 8 million, calculated over a period of 12 months, form the obligation to prepare a prospectus in accordance with the Prospectus Regulation, facilitating so-called "crowdfunding". Further, it provides for a "wholesale" exemption, meaning that when issuing debt securities with a minimum denomination of EUR 100,000, a prospectus as required by the Prospectus Regulation does not have to be published.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in your jurisdiction? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest? If withholding taxes might apply, what are the typical methods for eliminating or reducing withholding taxes?

As a matter of principle, there is no withholding tax in Luxembourg on payments of all items of income from capital other than dividends. In particular, Luxembourg does not apply any withholding tax on interest paid by one of its residents to a Luxembourg non-resident (unless such interest is not at arm's length or paid under a profit participating bond/security). The withholding tax exemption also covers dividend payments made by securitisation companies or funds on shares.

By way of exception, payments of interest, or similar income under a debt instrument that is listed and admitted to trading on a regulated market, that are made or ascribed by a paying agent (in the sense of the Law of 23 December 2005, as amended (the Relibi Law)) established in Luxembourg to or for an individual beneficial owner who is a resident of Luxembourg, will be subject to a withholding tax of currently 20%. Such withholding tax will be in full discharge of income tax if the beneficial owner is an individual acting in the course of the management of his/her private wealth (the 20% withholding tax). Responsibility for the withholding of such tax will be assumed by the Luxembourg paying agent. The application of the 20% withholding tax should be assessed on a case-by-case basis.

An individual beneficial owner of interest or similar income, who is a resident of Luxembourg and acts in the course of the management of his/her private wealth, may opt for a final 20% withholding tax when he/she receives or is deemed to receive such interest or similar income from a paying agent established in an EU Member State (other than Luxembourg) or in a state of the EEA (which is not an EU Member State).

There are currently no specific rules or guidance under the Luxembourg generally accepted accounting principles (the Luxembourg GAAP) that recharacterise a discount or a deferred purchase price as interest. However, it should be noted that a repayment above the discounted price would be fully taxable unless such sale at a discount would be structured in a tax-efficient way. This position was also taken by Luxembourg industry bodies.

9.2 Seller Tax Accounting. Does your jurisdiction require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

Luxembourg has no specific accounting policy for tax purposes in the context of securitisation insofar as the Luxembourg tax law usually follows the accounting rules applicable in Luxembourg as per the 1915 Law and the Law of 19 December

2002 on the Luxembourg trade and companies register, as well as accountancy and companies annual accounts, as amended (the 2002 Law).

The Luxembourg accounting rules will vary according to the legal form adopted by the seller or purchaser.

With regard to securitisation vehicles, the form may either be that of a securitisation company or that of a securitisation fund. In both cases, the accounts of a securitisation company must be audited by an independent auditor. If the securitisation vehicle issues securities to the public on a continuous basis, both the securitisation vehicle and the independent auditor must be authorised by the CSSF.

A securitisation company is subject to the accounting rules under the 2002 Law, whereas a securitisation fund is subject to accounting and tax regulations applicable to investment funds provided for by the Law of 17 December 2010 relating to undertakings for collective investments, as amended. Thus, the securitisation company may choose between Luxembourg GAAP under the historical cost convention, Luxembourg GAAP under the fair value convention, or international financial reporting standards (IFRS), while the securitisation fund may choose IFRS or Luxembourg GAAP under the mark-to-market convention, unless otherwise stated in the management regulations.

Crucially, the CSSF has confirmed that securitisation companies with multiple compartments should present their financial statements in such a form that the financial data for each compartment is clearly stated.

In addition, waterfall structures and valuation methods used to identify impairments or losses related thereto should be presented in the notes to be appended to the relevant financial statements.

Finally, a securitisation vehicle may book additional liability (at least tax-wise) to compensate "technical profit", i.e., profit linked to cash flows received by the securitisation vehicle, which will be distributed to the shareholders of the securitisation company or the unitholders of the securitisation fund in later fiscal years, in order to provide a true and fair view of the financial situation and to avoid unwarranted taxation (subject, however, to the interest limitation rule applying to securitisation companies).

9.3 Stamp Duty, etc. Does your jurisdiction impose stamp duty or other transfer or documentary taxes on sales of receivables?

According to article 52(1) of the Securitisation Law, all agreements entered into in the context of a securitisation transaction, as well as all other deeds relating to such transaction, are exempt from registration formalities if they do not have the effect of transferring rights pertaining to Luxembourg real estate, aircraft or ships. However, they may be presented for registration, in which case they will be subject to a fixed charge of EUR 12.

9.4 Value-Added Taxes. Does your jurisdiction impose value-added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

A securitisation vehicle should be considered a "taxable person" according to Circular No. 723 dated 29 December 2006 (Circular No. 723) issued by the Luxembourg Value-Added Tax Administration (*Administration de l'enregistrement des domaines et de la TVA*) (unless it takes the form of a securitisation fund or *fonds communs de placement* (FCP), in which case, it will be seen as an integral part of its management company, which is considered a single taxable person). As taxable persons, securitisation vehicles have the obligation to self-account for Luxembourg VAT under the reverse-charge mechanism on any non-VAT-exempt services – and to a certain extent, goods – received from outside Luxembourg. The VAT rates currently applicable in Luxembourg (in a securitisation context, the most relevant are the standard rate of 17% (applicable on, e.g., legal, tax and consulting services) and the intermediate rate of 14% (applicable on depository services limited to supervision and control)) are typically lower than those of its neighbouring countries. Securitisation vehicles should have no input VAT deduction right; however, a case-by-case analysis on the basis of the actual activities/investments performed is recommended. Nevertheless, transactions (except for those related to the collection of receivables) and negotiations related to receivables, as well as the management of securitisation vehicles located in Luxembourg, are exempt from VAT.

Pursuant to article 44(1)(d) of the Luxembourg Law dated 12 February 1979 on value-added taxes (the VAT Law), management services rendered to a securitisation vehicle are exempt from VAT.

The concept of "management" of securitisation vehicles is quite vague. In addition to the management of a portfolio of assets, some administrative services should benefit from the VAT exemption to the extent they form a distinct whole and fulfil the specific and essential functions of the management of a securitisation vehicle. The exemption should not, however, be available for purely material and/or technical services and cannot apply to "isolated" services within the meaning of Circular No. 723*bis* dated 20 April 2010 issued by the Luxembourg Value-Added Tax Administration, including, notably, isolated debt collection.

For VAT purposes, where a securitisation vehicle acquires receivables at a price below face value, the acquisition is not regarded as a debt collection service, provided the discount reflects the receivables' actual economic value at the time of purchase rather than remuneration for a service.

9.5 Purchaser Liability. If the seller is required to pay value-added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

The purchaser is jointly and severally liable for the payment of VAT on goods and services sold to it (including relevant fines) toward the country where the VAT is due, except if the purchaser proves that it has, in good faith, paid the VAT to the supplier.

9.6 Doing Business. Assuming that the purchaser conducts no other business in your jurisdiction, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in your jurisdiction?

With regard to the tax to be withheld by the purchaser, the rules detailed in the answer to question 9.1 above are applicable. As the investors are treated like bondholders with no

direct profit participation, no withholding tax should be applicable unless the payments of the purchaser fall under the scope of the Relibi Law.

No capital duty applies on incorporation of the corporate form (except for a fixed registration duty of EUR 75).

Securitisation vehicles organised as corporate entities, though excluded from the general net wealth tax regime, are subject to minimum net wealth tax, which, as of fiscal year 2025 (following a decision of the Luxembourg Constitutional Court dated 10 November 2023 and consecutive legislative reform), is determined as follows:

- EUR 535, if the total balance sheet of the company is less than or equal to EUR 350,000;
- EUR 1,605, if the total balance sheet of the company is greater than EUR 350,000 and less than or equal to EUR 2 million; and
- EUR 4,815, if the total balance sheet of the company exceeds EUR 2 million.

Securitisation funds and securitisation vehicles organised as partnerships are not liable to net wealth tax due to their tax transparency.

Regarding corporate income tax and municipal business tax, the tax treatment depends on the corporate form of the purchaser.

A. Securitisation vehicle organised as a corporate entity

A securitisation vehicle organised as a corporate entity with either its statutory seat or central administration in Luxembourg is fully liable to corporate income and municipal business taxes at an aggregate tax rate of 23.87% (irrespective of the vehicle's activity and possible appointment of a servicer or collection agent), which is the applicable rate for Luxembourg City for fiscal year 2026 (aggregate tax rates may be different for other municipalities, because of different municipal business tax rates).

Although a Luxembourg securitisation company is fully taxable, the commitments it assumes to remunerate its investors are treated as deductible operating expenses. Accordingly, amounts paid to noteholders – including payments labelled as "dividends" when they remunerate the notes – should not be subject to Luxembourg withholding tax. As of 1 January 2019, however, due to the transposition into Luxembourg tax law of the interest deduction limitation rule (article 168*bis* of the Luxembourg Income Tax Law (the LITL)), deduction of interest qualifying as "exceeding borrowing costs" is limited to the higher of:

(i) 30% of the company's EBITDA (defined as the total net income increased by the exceeding borrowing costs, depreciation and amortisation); or
(ii) EUR 3 million.

The EUR 3 million threshold is to be calculated at the company level and not at the compartment level only.

Exceeding borrowing costs are defined as the amount by which the deductible borrowing costs of a taxpayer exceeds taxable interest revenues and other economically equivalent taxable income of the taxpayer.

Interestingly, although borrowing costs are defined, the LITL does not provide for a definition of "interest revenues and other equivalent taxable income". According to the Luxembourg Tax Administration (*Administration des contributions directes*) Circular dated 25 March 2022 (the Circular), the term "interest income and other equivalent taxable income" should be interpreted by analogy to the definition of "excess borrowing costs" and should include the items listed under the latter definition accordingly (e.g., payments under profit participating loans; imputed interest on instruments such as convertible bonds and zero coupon bonds; amounts paid under alternative financing arrangements, such as Islamic finance; the finance cost element of finance lease payments; capitalised interest included in the balance sheet value of a related asset, or the amortisation of capitalised interest; amounts measured by reference to a financing return under transfer pricing rules; notional interest under derivative instruments or hedging arrangements related to an entity's borrowings; certain foreign exchange gains and losses on borrowings and instruments related to the raising of financial guarantee fees for financing arrangements; and agency fees and similar costs related to the borrowing of funds). The position of the Luxembourg Tax Administration hence follows the recommendations of the Luxembourg Chamber of Commerce on the corresponding draft law implementing the interest deduction limitation rule.

Another suitable source of interpretation of the term "interest income and other equivalent taxable income" is the accounting treatment of the income in accordance with the Luxembourg GAAP, although this is not binding and does not replace the "substance over form principle" as defined in the LITL.

Exceeding borrowing costs not deductible in a tax period can be carried forward without a specified time limit under the LITL. Unused interest deduction capacity, which cannot be utilised in a given tax period, can also be carried forward (however, this is for a maximum period of five years).

Exemptions to the interest deduction limitation rule have been introduced, as follows:

- Grandfathering: Debt instruments concluded before 17 June 2016 shall not fall within the scope of the interest deduction limitation rule to the extent that they have not been amended. The amount of exceeding borrowing costs shall be computed as if no amendments have taken place. The Circular confirms that in case of a subsequent modification, the grandfathering only applies to the original terms of the loan.
- The Circular provides for a non-exhaustive list of the amendments that would qualify as a subsequent modification of a loan, namely:
  - Modification of the term of the loan as of 17 June 2016, when such modification was not contractually foreseen before 17 June 2016.
  - Modification of the interest rate or the calculation of the interest as of 17 June 2016, when such modification was not contractually foreseen before 17 June 2016.
  - Change in the amount borrowed as of 17 June 2016.
  - Modification of one or more of the parties involved as of 17 June 2016, when such change was not contractually foreseen before 17 June 2016 (restructurings such as mergers or spin-offs do not impact the benefit of the grandfathering clause, as these transactions, as such, do not result in a change in the initial terms of the loan).
- The Circular also includes a non-exhaustive list of changes not to be considered a subsequent modification of a loan. *Inter alia*, and probably most importantly, draw-down of funds made (i) after 17 June 2016, (ii) under a facility agreement concluded prior to that date, and (iii) within the initial terms and conditions of such agreement, should not be considered subsequent modification of a loan.
- Equity escape rule: Where a taxpayer is a member of a consolidated group for financial accounting purposes, it may, upon request, fully deduct its exceeding borrowing costs if it can demonstrate that its equity-to-assets ratio is higher than or at least equal to (with a tolerance that is

lower by no more than two percentage points) the equivalent ratio of the group. In order for the equity escape rule to apply, all assets and liabilities must be valued using the same method as in the consolidated financial statements prepared in accordance with IFRS or the national financial reporting system of an EU Member State.

- Stand-alone entity: Stand-alone entities are exempt from the scope of application of the interest deduction limitation rule. A stand-alone entity is defined as a taxpayer that is not part of a consolidated group for financial accounting purposes and had no associated enterprise. The Circular specifies the term "stand-alone entity" as follows: a taxpayer that cumulatively meets three conditions, being that: (i) it is not part of a consolidated group for financial accounting purposes; (ii) it has no associated enterprise (i.e., any entity or individual that is recognised as being an associated enterprise as per the definition used for purposes of applying the Controlled Foreign Company (CFC) rules); and (iii) it has no permanent establishment located in a jurisdiction other than Luxembourg, is to be considered a stand-alone entity. The legal definition of "associated enterprise" as per article 168*ter* of the LITL encompasses any entity – and not company – in which the taxpayer holds, directly or indirectly, 50% or more of voting, capital or profit interests, or an individual or entity that holds, directly or indirectly, 50% or more of voting, capital or profit interest in the taxpayer. In case of hybrid mismatches involving a financial instrument, the threshold of 50% is replaced by a threshold of 25%. Furthermore, included in the category of associated enterprises are entities that are part of the same consolidated group for financial accounting purposes as the taxpayer, enterprises in which the taxpayer has significant managerial influence or enterprises that have a significant managerial influence over the taxpayer. The Circular further clarifies that "associated enterprise" is not limited to entities in which the taxpayer holds a participation. The existence of an associated link must be analysed from an economic point of view. As a result, a securitisation company held by a trust, a foundation or a *stichting* should not be considered a stand-alone entity under the interest deduction limitation rule. As per the Law of 20 December 2019 implementing Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (ATAD 2) into Luxembourg domestic law (the ATAD 2 Law), the so-called "acting together" concept was introduced in the framework of associated enterprises to circumvent abusive splitting of holding of participations to third parties, into several persons or entities. Following this concept, an individual or an entity who acts together with another individual or entity in respect to the voting rights or capital ownership in another entity shall be treated as holding the other's individual or entity's participation.
- Financial undertaking: This is outside the scope of the interest deduction limitation rule. Any entity that falls within the definition of a "financial undertaking" (under article 168*bis* of the LITL) benefits from this exclusion. This includes, *inter alia*, (i) alternative investment funds within the meaning of the AIFM Directive (2011/61/EU), (ii) UCITS within the meaning of the UCITS Directive (2009/65/EC), and (iii) securitisation vehicles within the meaning of article 2(2) of the Securitisation Regulation. However, on 14 May 2020, Luxembourg received a formal letter from the European Commission criticising the transposition of Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (ATAD 1) into Luxembourg law. Specifically, the European Commission considered that Luxembourg went beyond the framework of ATAD 1 by including securitisation vehicles as defined in article 2(2) of the Securitisation Regulation in the list of entities qualifying as "financial undertakings". As per the formal letter, Luxembourg is requested to transpose the interest deduction limitation rule in a manner that is fully compliant with ATAD 1. There is a likelihood that article 168*bis* (7) of the LITL will be amended to remove the carve-out concerning certain securitisation vehicles from the scope of the definition of "financial undertakings". It is, however, unclear whether such amendment will be made with retroactive effect or with effect on the current fiscal year. In addition, the Circular does not refer to this European Commission letter, nor to a potential amendment to article 168*bis* (7) of the LITL in order to rectify this non-compliance.

Additionally, when a taxpayer holds an interest in a tax-transparent entity (e.g., partnership), whatever the nature of the activities carried out by this entity, the taxpayer realises proportionally to the fraction held in this entity (i) the deductible borrowing costs, (ii) the taxable interest income, and (iii) other economically equivalent taxable income of the entity.

To summarise the impact of the interest deduction limitation rule on securitisation transactions, securitisation companies with interest-bearing assets and liabilities should not be significantly affected. However, securitisation companies receiving income from funds or shares, repackaging and, to a certain extent, non-performing loans might be impacted by such rule. Such structures should be assessed on a case-by-case basis in order to determine whether restructuring is required (it should be noted that the absence of a definition of an "interest revenue" leaves room for interpretation on certain kinds of hybrid income (e.g., capital gains on non-performing loans)).

As of 1 January 2025, a new exemption for taxpayers qualifying as a "single entity group" has been introduced in the LITL. A single entity group is defined as a taxpayer that simultaneously: (i) is not part of a consolidated group for financial accounting purposes (noting that a taxpayer excluded from consolidation solely due to its immateriality or small size is still considered as forming part of a consolidated group); and (ii) is not a stand-alone entity (i.e., it has associated enterprises within the meaning of article 164*ter* (2) of the LITL, or has a permanent establishment located outside Luxembourg).

Such taxpayers may, upon request, fully deduct their exceeding borrowing costs if they can demonstrate that the ratio between their equity and their total assets is equal to or higher than the equivalent ratio of the group (with a tolerance that is lower by no more than two percentage points). For the purposes of determining the group ratio, the equity of the group must be increased by any amounts that could give rise to borrowing costs owed by the taxpayer to associated enterprises (applying a 25% threshold instead of the standard 50%). Any arrangement put in place to avoid increasing the group's equity for this purpose is to be disregarded.

Such taxpayers may opt for this exemption for fiscal years starting on or after 1 January 2025. This exemption may be relevant for securitisation vehicles that do not fall within the meaning of article 2(2) of the Securitisation Regulation; however, the conditions for relying on this exemption, as well as their practical implementation, should be closely monitored.

In the case of hybrid mismatch arrangements, securitisation companies might also be affected by the ATAD 2 Law extending the rules to neutralise hybrid mismatch effects. Hybrid mismatch arrangements can be briefly summarised as taking

advantage of the different tax treatment of an entity or a financial instrument under the laws of two different jurisdictions to achieve either a double deduction or a deduction without inclusion. Such hybrid mismatch must arise between either of the associated enterprises within a structured arrangement. The ATAD 2 Law has introduced a legal definition of a structured arrangement, being an arrangement involving a hybrid mismatch where the mismatch outcome is priced into the terms of the arrangement or an arrangement that has been designed to produce a hybrid mismatch outcome, unless the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the hybrid mismatch and did not share in the value of the tax benefit resulting from the hybrid mismatch. In case a securitisation company issues a financial instrument with a hybrid character and the potential to be treated differently for tax purposes in the involved jurisdiction, the respective documentation would need to be carefully drafted in order to prove that no structured arrangement was intended.

Luxembourg has implemented Pillar Two for fiscal years beginning on or after 31 December 2023 (the Income Inclusion Rule and Qualified Domestic Minimum Top-up Tax (QDMTT)), with the Undertaxed Profits Rule applying for fiscal years beginning on or after 31 December 2024. This is set by the Law of 22 December 2023 on minimum effective taxation (as amended). The regime is administered by the Luxembourg Tax Administration and filed electronically via MyGuichet; the first filing deadline for the new Pillar Two procedures is set at 30 June 2026. The rules apply only to multinational enterprise groups and large domestic groups that meet the EUR 750 million consolidated revenue threshold set by the law. Securitisation vehicles, especially "orphan" structures, are often not consolidated for financial reporting and therefore commonly fall outside scope; however, where a securitisation entity is consolidated into an in-scope group, it is treated like any other Luxembourg constituent entity under the law. If an in-scope group's Luxembourg Pillar Two effective tax rate (ETR) (calculated under the Global Anti-Base Erosion (GloBE) Rules at the jurisdictional level) is under 15%, a Luxembourg top-up (i.e., QDMTT) can apply – even to a consolidated securitisation entity – subject to applicable exclusions and transitional safe harbours. Specifically, the computation of the effective taxation and taxable basis of securitisation vehicles could be subject to additional top-up taxes, should their ETR be lower than the 15% minimum rate.

On a separate note, securitisation companies may obtain tax residency certificates from the Luxembourg tax authorities to benefit from the European directives and Luxembourg's important tax treaty network.

B. Securitisation funds

In terms of tax, Securitisation funds should arguably be considered investment funds and transparent for Luxembourg tax purposes. Hence, they are not liable to corporate income tax, municipal business tax, or net wealth tax, and remain unaffected by the interest deduction limitation rule. It should be noted that reverse hybrid mismatch rules applying to tax-transparent vehicles are applicable in Luxembourg as of 1 January 2022. Securitisation funds may be subject to the reverse hybrid mismatch rules subject to case-by-case analysis.

Finally, both the fiduciary representative and the management company of a securitisation fund with their statutory seat or central administration (or even permanent establishment) in Luxembourg should be subject to corporate income tax, municipal business tax and net wealth tax in Luxembourg. They may also be subject to VAT (please refer to the answer to question 9.4 above). The fiduciary representative must, in addition, pay a registration tax of EUR 1,200 and an annual registration tax of EUR 1,200 to the CSSF.

C. Securitisation vehicle organised as a partnership

As mentioned under question 7.2 above, securitisation vehicles may also be organised as partnerships (i.e., as unlimited companies, common limited partnerships, special limited partnerships and simplified joint-stock companies). Partnerships are transparent for Luxembourg tax purposes. As a result, securitisation vehicles organised as partnerships will not be liable to corporate income tax, municipal business tax or net wealth tax, and are not in the scope of the interest deduction limitation rule. As it is the case for securitisation funds, it should be analysed on a case-by-case basis whether a given securitisation partnership is subject to the reverse hybrid mismatch rules.

9.7 Taxable Income. If a purchaser located in your jurisdiction receives debt relief as the result of a limited recourse clause (see question 7.4 above), is that debt relief liable to tax in your jurisdiction?

In general, a debt relief should be a taxable item in Luxembourg.

However, in case the purchaser is a securitisation company, taxable profits should be very limited or neutralised completely at the level of a securitisation company, given the fact that commitments assumed *vis-à-vis* the investors and any other creditor by a securitisation company are considered fully tax-deductible business expenses (subject, however, to the interest deduction limitation rule outlined under question 9.6 above).

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