

ATOZ

TAX ADVISERS

LUXEMBOURG

THE SECURITISATION VEHICLE



What is a Securitisation Vehicle?

A Securitisation Vehicle (SV) within the meaning of the Securitisation Law is a vehicle, which acquires or assumes, directly or through another undertaking, risks relating to claims, other assets, or obligations assumed by third parties or inherent to all or part of the activities of third parties and issues securities, whose value or yield depends on these risks.

Luxembourg SVs are available to all types of investors and are subject to prior authorisation and supervision by the Luxembourg regulator only if they issue securities to the public on a continuous basis. They are operationally flexible and fiscally efficient investment vehicles.

What type of investments can be placed into a Securitisation Vehicle?

A very wide range of securitisation transactions are covered by the Securitisation Law. The securitisation operation may relate to domestic or foreign, movable or immovable, future or present claims, risks, assets or obligations. It is therefore possible to securitise assets such as shares, loans, subordinated or non-subordinated bonds, risks linked to claims (commercial and other), movable and immovable property (whether tangible or not), and ultimately any type of assets that have a real value or a future income. To the extent that the parties have agreed on the risks to be transferred and to the extent that the investors are properly informed, the SV will be able to assume all types of risk.

What type of investors can invest into a Securitisation Vehicle?

The Securitisation Law does not impose any restrictions on the type of investors able to invest into a SV. Therefore, the SV is open to both institutional investors and individuals.

How to set up a Securitisation Vehicle?

The SV is not a legal form as such. The SV can be incorporated either under the form of a Securitisation Company or under the form of a Securitisation Fund managed by a management company.

The Securitisation Company can be set up as a public limited company (SA), a partnership limited by shares (SCA), a private limited company (Sàrl), or a cooperative organised in the form of a public limited liability company.

The Securitisation Fund has no legal personality. It is a co-ownership of assets and is represented by its management company vis-à-vis third parties. It can also be organised as a fiduciary estate, subject to the legislation on trusts and fiduciary contracts.

Securitisation Companies are subject to the same requirements in terms of minimum share capital as ordinary commercial companies (EUR 30,000 for a SA and SCA and EUR 12,000 for a Sàrl). As far as Securitisation Funds are concerned, because they have no legal personality, the minimum share capital requirements apply to the management company only.

Both Securitisation Company and Securitisation Fund can create multiple compartments with specific investment policies. In such cases, the rights of the investors and creditors will be limited to the assets of the respective investment compartment.

How is a Securitisation Vehicle regulated?

Luxembourg SVs are regulated, and are as such subject to the prior authorisation and supervision of the Luxembourg Regulator (CSSF), only if they issue securities to the public on a continuous basis. A SV is deemed to issue securities on a continuous basis if it makes more than three issues per year to the public. In all other cases, the SV is not regulated and does not need to be authorised.

The SV is not required to comply with risk spreading or diversification requirements.

How to manage a Securitisation Vehicle?

The management of the SV and its organisation are flexible and not subject to any specific rules in principle. However, Securitisation Funds have to be managed by a management company whose registered office is in Luxembourg. Moreover, if a SV qualifies as an alternative investment fund within the meaning of the Law of 12 July 2013 on alternative investment fund managers, then it must be managed by a manager appointed according to the said law.

An authorised SV must have adequate organisation and resources, and must be managed by a minimum of three directors.

Even if not formally required, the central administration of the Securitisation Company and of the management company of the Securitisation Fund has to be located in Luxembourg. The central administration can be delegated to a service provider or handled by the management of the SV, as the case may be.

The SV is required to appoint an independent auditor to audit the annual accounts.

What are the key tax and legal benefits of a Securitisation Vehicle?

The Securitisation Law allows a high degree of flexibility in the types of securitisation transactions, the type of investors, and in the form under which a SV can be set up. The Securitisation Law also ensures the tax neutrality of SVs.

As far as the tax aspects are concerned, the SV can be incorporated either as a tax transparent vehicle or as a non-tax transparent vehicle.

If set up as a Securitisation Fund, it is considered as a tax transparent vehicle, meaning that the taxation of the income generated does not take place at the level of the Securitisation Fund itself but at the level of its investors. The Securitisation Fund is not subject to subscription tax. Finally, management services rendered to the Securitisation Fund are exempt from VAT.

If set up as a Securitisation Company, the SV is considered as a fully taxable company and is, as such, subject to Corporate Income Tax (CIT) and Municipal Business Tax (MBT) on its income at a global rate of currently 27.08% to be decreased to 26.01% in 2018. However, the Securitisation Company benefits from a specific tax regime according to which any commitments to investors and other creditors, even if considered as a dividend from a legal point of view, are considered as a deductible expense for Luxembourg tax purposes. This means that in practice, the Securitisation Company has a taxable basis close to nil, as the income realised by the Company is offset by a tax deductible expense.

The Securitisation Company is only subject to the annual minimum Net Wealth Tax (NWT). The annual minimum NWT amounts to EUR 4,815 if the financial assets, transferable securities, bank deposits and receivables against related parties of the Securitisation Company represent more than 90% of its total balance sheet and exceed EUR 350,000. In the case where the company does not meet these requirements, the minimum NWT varies between EUR 535 and EUR 32,100, depending on the level of the total balance sheet.

Securitisation Companies benefit from most of the double tax treaties concluded by Luxembourg as well as from the EU Directives.

SVs are bankruptcy remote vehicles. The rights of the investors and of the creditors are limited to the assets of the vehicle or of the compartments to which they are attached. The Securitisation Law allows investors not to petition for the bankruptcy of the vehicle.

SVs can be listed, which, under certain circumstances, could be considered as a suitable exit scenario.

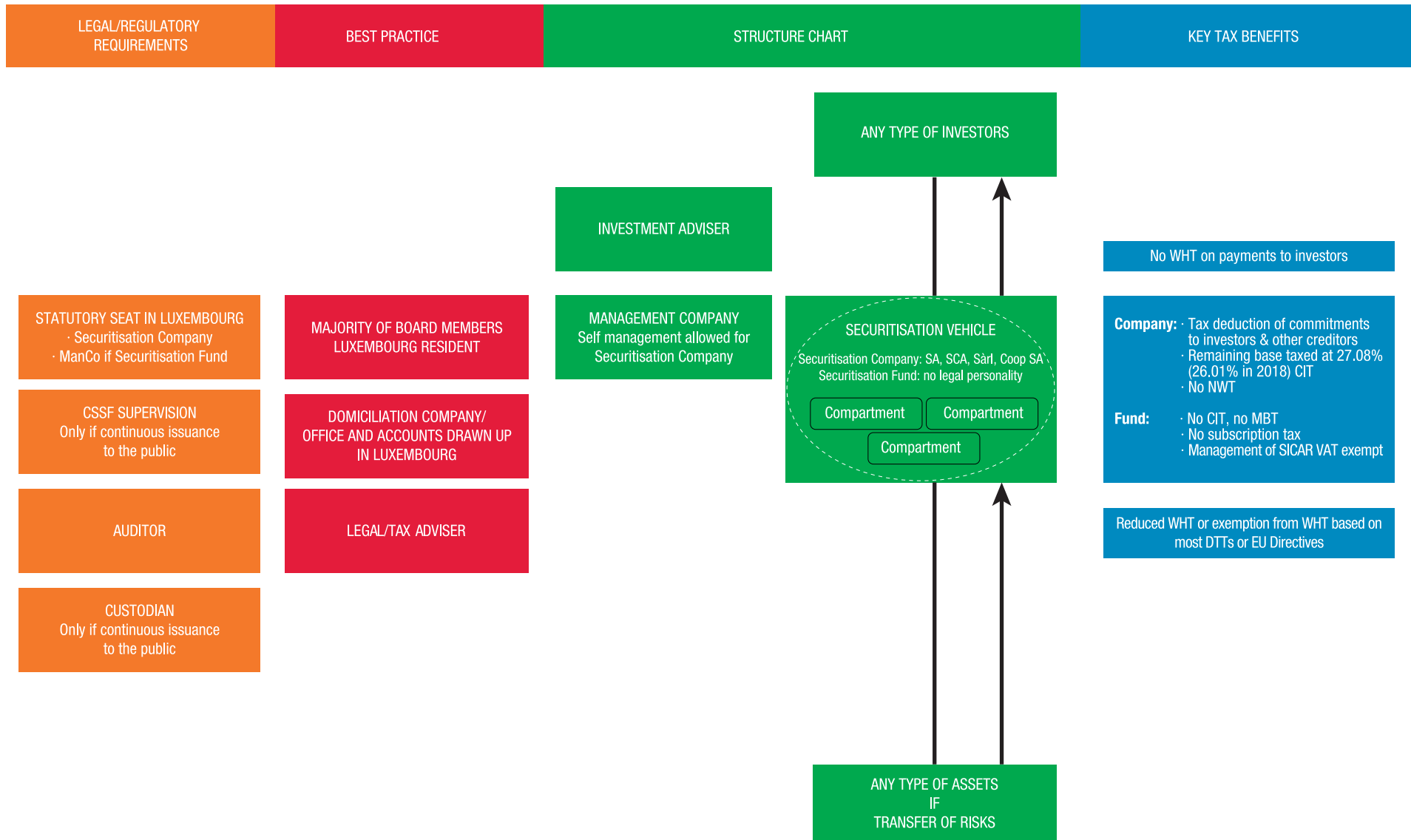
Why ATOZ?

ATOZ is a Luxembourg high end independent advisory firm offering comprehensive solutions encompassing the entire life cycle of an investment entity: from tax planning and corporate implementation, management and compliance/maintenance, to exit planning (sale, M&A or dissolution) with a strong focus on alternative investment PE/PERE funds, multinational corporations, financial institutions and high net worth families.

ATOZ is very active in the PE sector, advising multibillion funds investing throughout the world. ATOZ has managed to take advantage of in-depth industry knowledge to find innovative solutions for the PE industry which create added value for both LPs and GPs. ATOZ is an active member of the Luxembourg Private Equity Association.

In 2005, ATOZ was amongst the founding members of Taxand, the global network of high-end tax practices. Taxand is the world's largest independent tax organisation with more than 400 tax partners and over 2,000 tax advisers in over 40 countries. Taxand focuses on delivering high quality, integrated tax advice, free from conflict creating audit work. Taxand advisers work together to deliver global tax services for clients.

THE SECURITISATION VEHICLE - OVERVIEW



www.atoz.lu

1B, Heienhaff - L-1736 Senningerberg

Copyright © Atoz 2017