Legal 500
Country Comparative Guides 2025

Liechtenstein
Securitisation

Contributor

Marxer & Partner
Attorneys-at-Law

Dr. iur. Michael Oberhuber, LL.M.

Partner | michael.oberhuber@marxerpartner.com

Mag. iur. Sonja Schwaighofer, LL.M.

Partner | sonja.schwaighofer@marxerpartner.com

This country-specific Q&A provides an overview of securitisation laws and regulations applicable in Liechtenstein.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

Liechtenstein: Securitisation

1. How active is the securitisation market in your jurisdiction? What types of securitisations are typical in terms of underlying assets and receivables?

The securitisation market in Liechtenstein is not very developed and therefore no specific types of assets and receivables may be allocated for securitisation purposes. In particular, Liechtenstein banks are not currently active in securitisation for regulatory and practicable reasons as well as the small size of the Liechtenstein market. Also, there are currently no STS securitisations registered on ESMA Register of STS Notifications.

On the other hand, Liechtenstein has recently introduced a law for covered bonds (*Pfandbriefanleihe*), which came into force on February 1, 2025. The law establishes a covered bond framework that is closely based on the Swiss covered bond model. Under this new legal framework, covered bonds will be issued exclusively by a newly established and FMA-supervised covered bond institution, ensuring regulatory oversight and financial stability. This approach aims to enhance liquidity for mortgage financing and intends to strengthen Liechtenstein's financial market by providing a reliable long-term refinancing instrument. The first covered bond issue is scheduled for the second half of 2025.

2. What assets can be securitised (and are there assets which are prohibited from being securitised)?

Liechtenstein law does not provide for a specific regulation on types of asset classes that are generally prohibited from a securitisation. In theory, all assets that can be assigned and create a cash flow such as claims, loans or other receivables, may be included in a securitisation. The assignment of claims resulting from confidential legal relationships may be restricted unless the debtor consents to such assignment or waives their rights of protection of data/confidentiality arising from such legal relationship.

3. What legislation governs securitisation in your jurisdiction? Which types of transactions fall within the scope of this legislation?

Regulation (EU) 2017/2402 laying down a general framework for securitisation, creating a specific framework for Simple, Transparent and Standardized (STS) Securitisation and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 ("EU Securitisation Regulation"), as amended, directly applies in Liechtenstein. The Regulation creates a uniform regulatory framework for securitisations in Liechtenstein for the first time.

In order to give effect to Art. 29 ("Designation of competent authorities"), Art. 30 ("Powers of the competent authorities"), Art. 32 ("Administrative sanctions and remedial measures"), Art. 33 ("Exercise of the power to impose administrative sanctions and remedial measures") and Art. 34 ("Criminal Sanctions") of the EU Securitisation Regulation, Liechtenstein has passed the EEA-Securitisation Implementation Act (EWR-Verbriefungs-Durchführungsgesetz; "EWR-VDG").

Apart from the EU Securitsation Regulation, the relevant technical and implementing standards at EU level and the EWR-VDG, there exists no specific Liechtenstein legislation governing, for example, the civil, insolvency or tax law aspects in of securitisation. The assignment of claims, loans and other types of receivables is regulated in the Liechtenstein General Civil Code.

4. Give a brief overview of the typical legal structures used in your jurisdiction for securitisations and key parties involved.

There exists no developed securitisation practice in Liechtenstein. However, the public company limited by shares (*Aktiengesellschaft*) would be a type of company that may be ideally used for securitisation purposes.

5. Which body is responsible for regulating securitisation in your jurisdiction?

As EEA member state, Liechtenstein as to implement the EU Securitisation Regulation (see question 3). The Liechtenstein Financial Market Authority ("FMA", *Finanzmarktaufsicht*) is the competent regulatory

authority responsible for overseeing compliance with all due diligence and reporting requirements as well as the adequacy of risk monitoring of securitization participants within the meaning of Art. 29 EU Securitisation Regulation.

6. Are there regulatory or other limitations on the nature of entities that may participate in a securitisation (either on the sell side or the buy side)?

The regulatory requirements and conditions set out in the EU Securitisation Regulation directly apply to securitisation transactions in Liechtenstein (see also, in particular, the answer to question 9).

Under national Liechtenstein law, securitisation as such is not a regulated activity. However, certain participants in a securitisation transaction have to be licensed under existing financial markets laws such as the Liechtenstein Banking Act (*Bankgesetz*). For example, the sponsor of a securitization transaction, if domiciled in Liechtenstein, has to be licensed as a bank or investment firm by the FMA.

Furthermore, confidentiality requirements of banks and other financial institutions under Liechtenstein law may prevent the disclosure of personal data of debtors and/or customers to a third party such as a Special Purpose Vehicle (SPV) without the prior consent of the customer.

7. Does your jurisdiction have a concept of "simple, transparent and comparable" securitisations?

Yes. Since the entry into force of the EU Securitisation Regulation in Liechtenstein, the concept of Simple, Transparent and Standardised Securitisation ("STS Securitisation") has been introduced in Liechtenstein through Chapter 4 of the EU Securitisation Regulation.

8. Does your jurisdiction distinguish between private and public securitisations?

A distinction is made if a securitisation transaction is connected with a public offering or a private placement. In case of a public offering of securities, a prospectus in accordance with Regulation (EU) 2017/112 ("EU Prospectus Regulation") has to be drawn up and approved by the competent regulator.

9. Are there registration, authorisation or other filing requirements in relation to securitisations in your jurisdiction (either in relation to participants or transactions themselves)?

Within the scope of application of the EU Securitisation Regulation, originators, sponsors and SPVs are required to submit certain information and documents about the transaction to the competent authority and, if applicable, a securitisation repository. Additionally, originators and sponsors have to jointly notify the European Securities and Markets Authority ("ESMA") where a securitisation meets the requirements of a STS Securitisation.

Furthermore, certain participants in a securitisation transaction may have to be a licensed financial market participant or specifically licensed by the competent regulator or ESMA in accordance with the requirements of the EU Securitisation Regulation. In particular, a securitization repository has to be registered with ESMA; a third party verifying compliance with STS requirements as well as an originator of an ABCP Programme has to be licensed by the FMA or another competent regulatory authority in the EEA; the sponsor of a securitisation transaction has to be licensed as a credit institution or an investment firm in the EEA or a third country.

In addition, the securitisation transaction may be subject to the prospectus duty according to the Prospectus Ordinance.

10. What are the disclosure requirements for public securitisations? How do these compare to the disclosure requirements to private securitisations? Are there reporting templates that are required to be used?

Within the scope of application of the EU Securitisation Regulation, the originator, sponsor and SPV will have to make certain disclosures to holders of a securitisation position, the competent authorities, to a securitisation repository, if applicable, and, upon request, to investors. This disclosure requirement will apply to both public and private securitisations.

The EU Commission has issued technical standards implementing the disclosure requirement pursuant to the EU Securitisation Regulation (Commission Delegated Regulation (EU) 2020/1224), including a template for making the relevant disclosures to competent authorities and securitisation repositories (Commission Implementing Regulation (EU) 2020/1225).

In addition to the foregoing disclosure requirements, securitisation connected with a public offering may be subject to the prospectus duty in accordance with the EU Prospectus Regulation and therefore certain disclosure requirements apply to an issuer.

11. Does your jurisdiction require securitising entities to retain risk? How is this done?

Within the scope of application of the EU Securitisation Regulation, the originator, sponsor or original lender of a securitisation has to retain, on an ongoing basis, a material net economic interest in the securitisation of not less than 5%. That interest has to be calculated at the source and determined by the notional value for off-balance-sheet items.

Where the originator, sponsor or original lender have not agreed between them who will retain the material net economic interest, the originator has to retain the material net economic interest. For the purpose of this requirement, the originator must not be an entity that has been established or operates for the sole purpose of securitising exposures.

In addition to the foregoing requirements, participants in a securitisation like banks or investment firms may be subject to certain general capital requirements according to the Banking Act.

12. Do investors have regulatory obligations to conduct due diligence before investing?

Institutional investors are specifically required to carry out due diligence prior to holding a securitisation position pursuant to Art. 5 of the EU Securitisation Regulation.

For the purpose of this provision, an institutional investor is a credit institution, an investment firm, an insurance undertaking or reinsurance undertaking, occupational pension schemes in scope of Directive (EU) 2016/2341, the EEA management company of an undertaking for the collective investment in transferable securities (UCITS) or an internally-managed UCITS or alternative investment fund (AIF) established in the EEA, or an alternative investment fund manager that manages or markets alternative investment funds (AIF) in the EEA.

Furthermore, an institutional investor may generally be subject to a duty of care with a view to investments under civil or company law or, in case of licensed entities, under relevant financial market regulations.

In particular, a legal entity going to invest in a certain financial product has to verify the adequate and proper character of an investment and to check whether such investment would violate the object of the entity, provisions of its articles or internal regulations.

In addition, securitisation positions may not be sold to retail investors domiciled in Liechtenstein, unless the seller has performed a suitability test in accordance with Art. 25 (2) of Directive 2014/65/EU ("MiFID II") and is satisfied, on the basis of the test, that the securitisation position is suitable for that retail investor, among other requirements (Art. 3 EU Securitisation Regulation). In this context, a retail investor is a non-professional client within the meaning of Art. 4 (1) (11) MiFID II Directive.

13. What penalties are securitisation participants subject to for breaching regulatory obligations?

The administrative and criminal sanctions set out in Art. 32 and 34 EU Securitisation Regulation, respectively, apply in Liechtenstein by virtue of Art. 6 EWR-VDG.

14. Are there regulatory or practical restrictions on the nature of securitisation SPVs? Are SPVs within the scope of regulatory requirements of securitisation in your jurisdiction? And if so, which requirements?

According to Art. 4 of the EU Securitisation Regulation, a SPV must not be established in a third country that is listed as a high-risk and non-cooperative jurisdiction by the FATF and/or a third country that has not signed an agreement with Liechtenstein regarding the effective exchange of information on tax matters based on the OECD Model Agreement on the Exchange of Information on Tax Matters.

Apart from those requirements, there exist no specific restrictions on the nature of securitisation SPVs. In theory, a public company limited by shares (*Aktiengesellschaft*) would be a type of entity to be used for securitisation purposes. Depending on the type of transaction, a SPV may be subject to the regulatory requirements of the Banking Act or the Prospectus Ordinance.

15. How are securitisation SPVs made bankruptcy remote?

There exists no specific law or developed practice in Liechtenstein to make a SPV bankruptcy remote. In theory, a SPV may limit its corporate object in its articles

of association or, in addition to the corporate structure, non-petition, limited recourse and no-setoff provisions may be implemented in the contract with the counterparties.

Moreover, Liechtenstein trust law allows to form orphan owner structures, where the shareholder of an SPV is a trust controlled by a corporate trustee that is not affiliated with the originator. Unlike other jurisdictions, Liechtenstein trust law also allows Purpose Trust Structures.

16. What are the key forms of credit support in your jurisdiction?

There is no established practice in key forms of credit support in securitisation transactions in Liechtenstein. However, credit support might be provided by way of a subordination agreement with certain creditors or by way of over-collateralization. However, over-collateralization (difference between the value of the assets purchased and the purchase price paid to the originator) may trigger the risk of a challenge of the transfer by creditors of the originator (creditors´ avoidance within or outside insolvency proceedings).

17. How may the transfer of assets be effected, in particular to achieve a 'true sale'? Must the obligors be notified?

A transfer of receivables requires a Share Purchase Agreement (SPA) between the assignor and the assignee and the effective assignment and transfer of the receivables to the purchaser. Furthermore, the sales price has to comply with the arms-length principle. The consent of the debtor is generally not required. In some cases (see question 2) the debtor has to consent to an assignment and transfer of the receivables to the purchaser.

However, in order to achieve a "true sale" of receivables governed by Liechtenstein law, the obligor has to be notified of the assignment. Otherwise, the debtor is allowed (to continue) to validly discharge their obligations under the agreement the receivables are based on.

Furthermore, the obligor generally has a right to set-off against the creditor of the receivable and against persons to whom the creditor has assigned, pledged or otherwise used the credit claim as collateral unless they have waived their right to set-off in writing or in a legally equivalent form.

The same applies to the obligor's rights arising from a bank's duty of confidentiality which generally prevent or restrict the bank from providing information on the credit claim or the obligor to a purchaser. The obligor has to waive their right to confidentiality in writing or in a legally equivalent form.

If the obligor is a consumer, such a waiver may not be fully effective under Liechtenstein law or may be subject to a subsequent review by a Liechtenstein court.

18. In what circumstances might the transfer of assets be challenged by a court in your jurisdiction?

In practice, acts or omissions detrimental to creditors of the originator are challenged within or outside of insolvency proceedings such as a transfer of assets without an arms-length consideration. The same applies to acts of an entity incorporated in Liechtenstein violating capital maintenance requirements.

19. Are there data protection or confidentiality measures protecting obligors in a securitisation?

The general data protection and confidentiality provisions applicable to financial institutions and certain professions such as lawyers, physicians etc. apply. In practice, banks usually have to obtain a waiver of confidentiality requirements from their customers before being able to assign and transfer loan obligations (see also question 17).

20. Is the conduct of credit rating agencies regulated?

The EU Regulations governing rating agencies are directly applicable in Liechtenstein. The Liechtenstein CRA implementation law provides for additional provisions regulating the competent authority, their functions and powers, and penal provisions.

21. Are there taxation considerations in your jurisdiction for originators, securitisation SPVs and investors?

Due to its moderate corporate taxation on income and profits and a considerable number of double taxation treaties, Liechtenstein would be an attractive place to establish SPVs compared to other jurisdictions. There are in general no withholding taxes on dividends paid to

investors, always subject to double taxation treaties.

However, the main tax issue concerning SPVs established in Liechtenstein is the Swiss stamp duty that is generally applicable in Liechtenstein. In addition and depending on the structuring of the transfer, potential VAT on the transfer of assets/receivables and mitigation of VAT costs incurred as well as VAT on services provided to the SPV by a foreign service provider (reverse VAT for imported services) may have a negative impact on SPVs.

22. To what extent does the legal and regulatory framework for securitisations in your jurisdiction allow for global or cross-border transactions?

There is no specific cross -border securitisation legislation in Liechtenstein. However, due to its Membership in the EEA the EU freedom of movement of capital and the EU freedom to provide services also apply in Liechtenstein.

23. How is the legal and regulatory framework for securitisations changing in your jurisdiction? How could it be improved?

The entry into force of EU Securitisation Regulation in Liechtenstein has improved the regulatory framework for securitisations. Furthermore, less stringent confidentiality rules and a clarification of the conditions for insolvency-proof true sale securitisations by the legislator would generally facilitate the insolvency-remote sale of receivables by banks.

24. Are there any filings or formalities to be satisfied in your jurisdiction in order to constitute a true sale of receivables?

The general provisions of the civil law concerning contracts apply to a transfer of assets, including a true sale of receivables. Depending on the type of assets to be transferred, filings or formalities like the requirement of a written agreement, certification of signatures, notarial act or registration in public registers may apply (e.g. if a debt is secured by a mortgage, the transfer of the mortgage has to be registered in the land register).

Contributors

Dr. iur. Michael Oberhuber, LL.M.
Partner
michael.oberhuber@marxerpartner.com

Mag. iur. Sonja Schwaighofer, LL.M.
Partner
sonja.schwaighofer@marxerpartner.com