

# VALUE RECOVERY THROUGH LUXEMBOURG

Oostvogels Pfister Feyten



# Overview

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- ❑ Introduction
- ❑ Discounted / Distressed Debt Investment through Luxembourg Fund Structures
  - Regulated & Unregulated Options
  - Finance
  - Corporate
  - Taxation
- ❑ Appendix - Biographies

# Luxembourg Fund Structures

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## *‘Regulated and Unregulated Options’*

### □ Vehicles within a Regulated Environment:

- Specialised Investment Fund (‘SIF’) - Introduced in February 2007
- Venture Capital Investment Company (‘SICAR’) - Introduced in 2004 and further enhanced in October 2008

### □ Vehicles within an Unregulated Environment:

- Securitisation company/fund introduced in March 2004
- Soparfi (ordinary taxable company)

# SIF & Discounted / Distressed Debt

## □ SIF

- Flexible, regulated investment fund
- Institutional, professional and expert investors

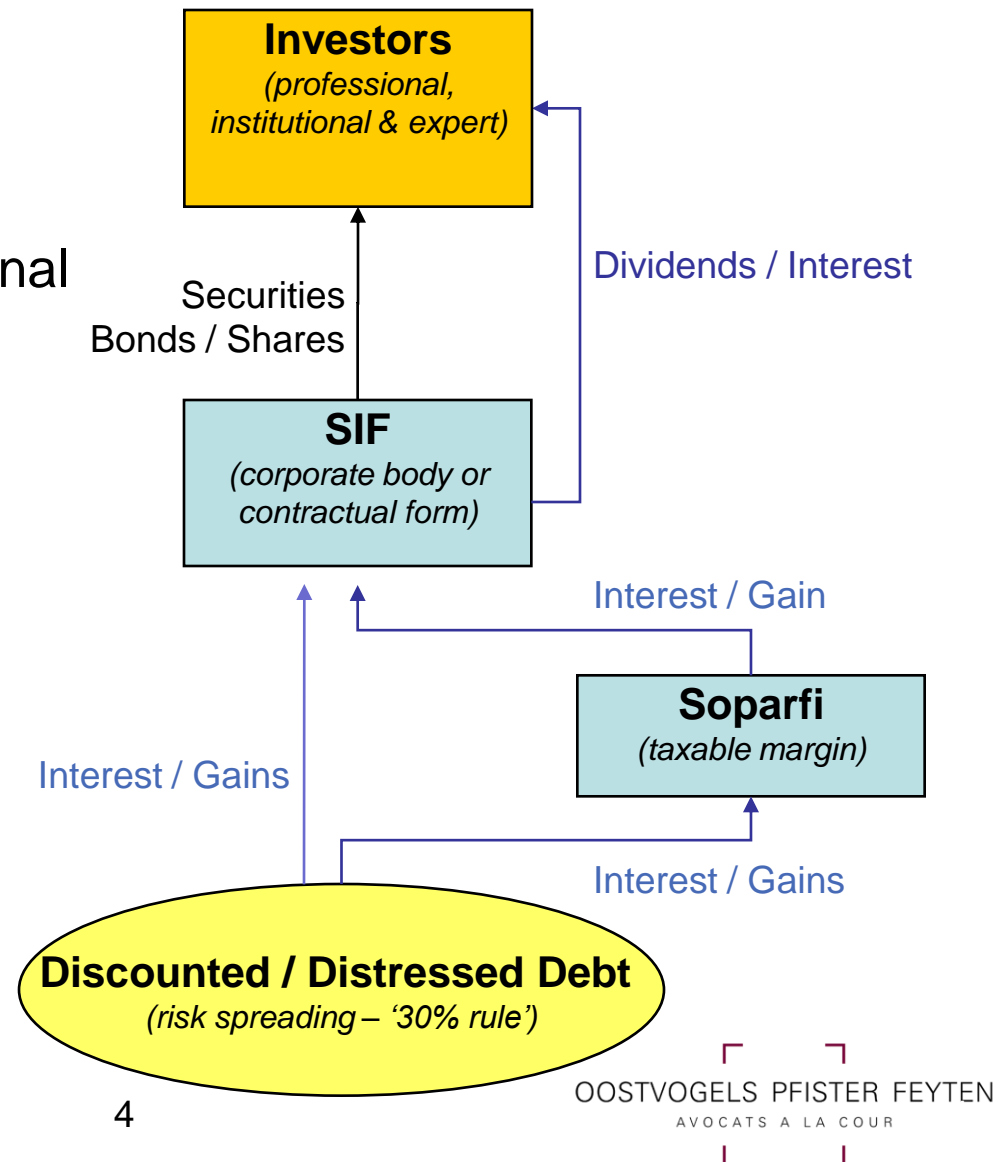
## □ Investments

- In 'values'
- Risk spreading
- Leverage - CSSF

## □ Compartments

- Fully segregated

## □ Tax neutral



# SICAR & Discounted / Distressed Debt

## ❑ SICAR

- Regulated VC / PE vehicle
- Institutional, professional and expert investors

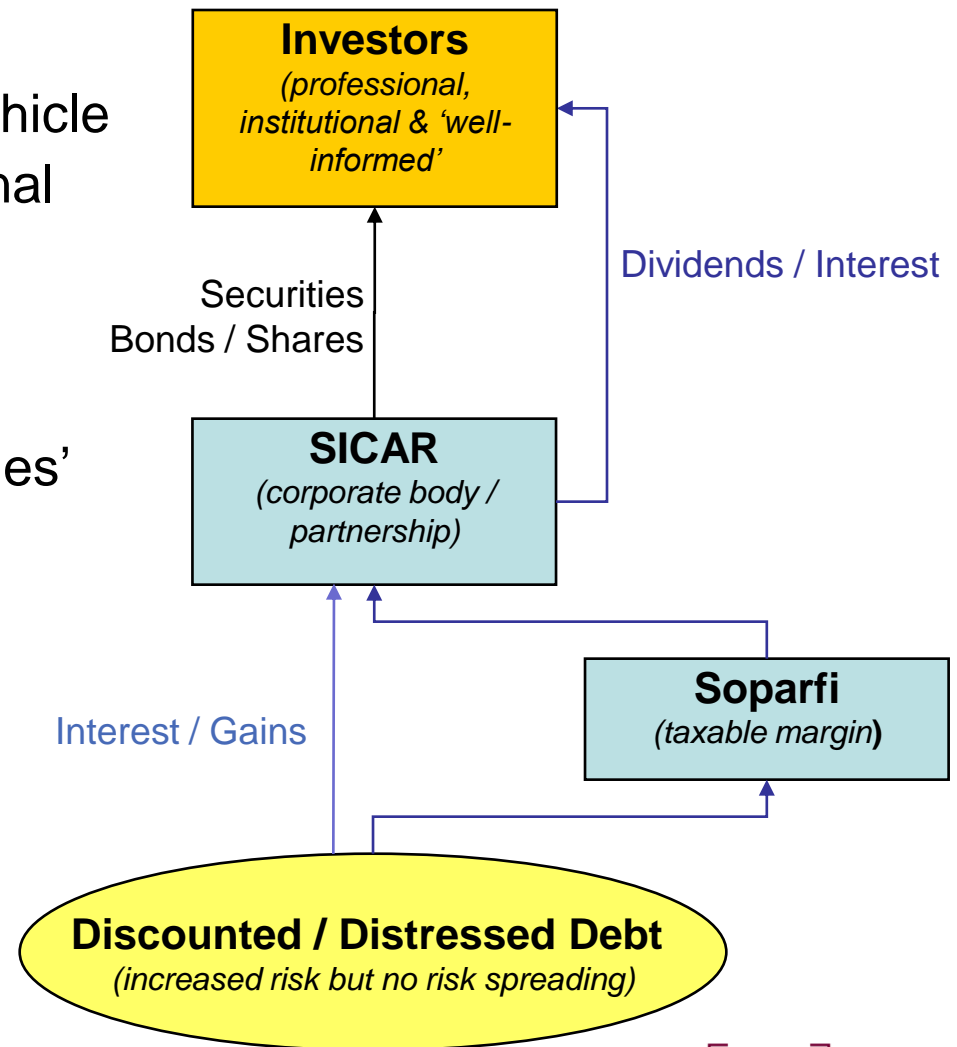
## ❑ Investments

- In 'risk capital'
- In 'transferable securities'
- No risk spreading
- No leverage limitation

## ❑ Compartments

- Fully segregated

## ❑ Tax neutral



# Securitisation of Discounted / Distressed Debt

## ❑ Securitisation Vehicle ('SV')

- Flexible investment vehicle
- Choice for unregulated or regulated

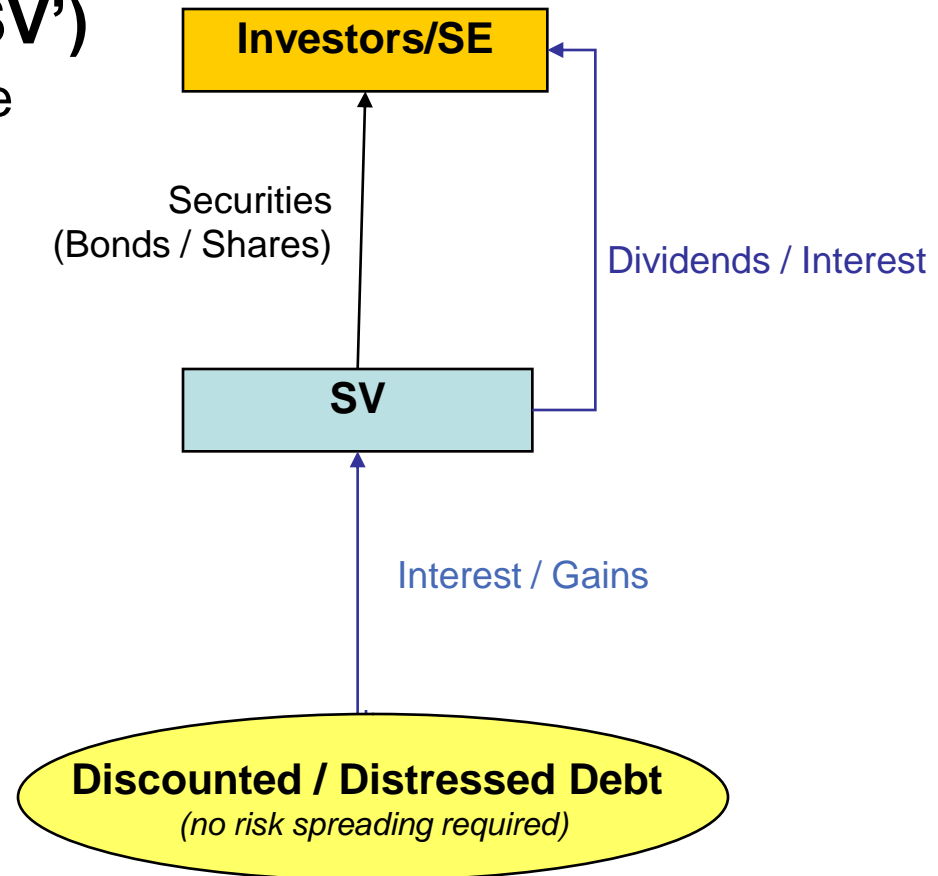
## ❑ Investments

- In 'risks'
- Leverage
- No risk spreading

## ❑ Compartments

- Fully segregated

## ❑ Tax neutral



# Structural Trends

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- ❑ Onshorisation
- ❑ Redomicilation
- ❑ Institutionalisation
- ❑ Regulatory Issues
- ❑ Strengthening of Supervision

# Finance

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- Regulatory Issues
- Securitisation Vehicle
- Debt Buy-Back and Subordination Issues



# Finance

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## ❑ Securitisation Vehicle

- Securities issues / leverage
  - Temporary debt financing
  - A long term debt
  - Leverage
- Granting security interest / full protection against insolvency
  - Protection from Securitisation Law
  - Protection from the 'Law on Financial Collateral Arrangements'
- Intra-group loans

## ❑ Debt Buy-backs and Subordination Issues

- Equitable subordination
- 'Re-characterisation'
- Luxembourg and other jurisdictions

# Corporate – ‘Form’

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## ☐ Check List

- Limited liability for investors
  - S.A. - public company limited by shares
  - Sàrl - private limited company
  - S.C.A. - partnership limited by shares
- Tax neutrality
- Check-the-box
- Public bond issue

## ☐ SCA

- Corporate partnership limited by shares
- Limited liability for GP
- Veto rights
- Appointment of permanent representative?

# Risk Segregation & Profits Tracking

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❑ Regulated Entities and SV - **Compartments possible? Yes**

❑ Unregulated Entities – **Compartments possible? No**

- Different classes of shares
- Tracking shares
- ... with qualifications
  - Interdiction of *leonine* clauses
  - Distributable profits
  - Legal reserve
  - Danger of leverage



# Corporate Governance

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## □ Conflict of Interest

- Promotors vs. Syndicate of Lenders
- Promotor vs. Company

# Taxation

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## □ Direct Taxation: Neutral Value Recovery Investment

- Fund Vehicles (SICAR – SIF – SV)
  - CIT – NWT: statutory / effective neutrality
  - WHT: n/a, unless EU Savings Directive
  - *‘Taxe d’abonnement’*: a residual 0.01% on SIF only
- Soparfi (debt funded)
  - CIT: marginal taxation
  - NWT: issue of discounted debt valuation
  - WT: n/a if debt/hybrid financed, unless:
    - ⇒ EU Savings Directive
    - ⇒ General transfer pricing rules

# Taxation

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## □ Indirect Taxation

- 0.24% registration tax on debt instruments mainly upon:
  - Debt – equity swaps
  - Court Proceedings
  
- VAT
  - Soparfi: 15% reverse VAT charge on certain services
  - Fund vehicles:
    - ⇒ VAT neutrality
    - ⇒ Concept of ‘management services’
  - Factoring & debt collection issues

# Taxation

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## □ Points of Attention

- EU State Aid – Double tax treaty entitlement
  - State Aid discussion on fund vehicles
  - Tax residence of fund vehicles for tax treaty and EU law
  - Beneficial ownership test – Lux.-UK context (Indofood)
- Information Exchange – Transparency – Debate on Bank Secrecy
  - US anti tax haven abuse bill
  - G-20 Summit – OECD Report of April 12, 2009
  - EU Level (revised Savings Directive – new proposals)

# Why Luxembourg?

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- Stability
- Respectability
- Flexibility
- Quality
- Notoriety

## BIOGRAPHIES

# Frédéric Feyten, Partner, Tax

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Frédéric is the managing partner of Oostvogels Pfister Feyten and is also head of the firm's tax department. He has specialised in Luxembourg and international taxation for over 15 years and has extensive advisory experience of structuring cross border transactions through Luxembourg.

Frédéric advises mainly international corporate clients and investment banks on international corporate tax planning, structured finance and financial products involving Luxembourg. He studied law at the Universities of Brussels and Leuven and is a member of the Brussels and Luxembourg Bar. A Belgian national, Frédéric frequently gives presentations and publishes articles on Luxembourg taxation.



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# Stef Oostvogels, Partner, Corporate

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Stef is a founding partner of Oostvogels Pfister Feyten. With over 20 years of experience, he specialises in the areas of mergers and acquisitions, private equity, banking and finance, corporate law, international taxation, and general business law.

Stef has been a member of the Luxembourg Bar since 1990 and a member of the Brussels Bar since 1987. He graduated from the University of Brussels and the University of Louvain (Belgium) and also speaks many languages including English, French, Dutch and German.



Stef is a speaker at several international seminars on corporate law, taxation and finance.

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# François Pfister, Partner, Investment Funds

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A senior partner and co-founder of Oostvogels Pfister Feyten, François specialises in the areas of investment funds, international taxation, mergers and acquisitions, banking and finance, corporate law, and general business law.

Throughout his career, François has worked with major organisations such as Svenska Handelsbanken as well as acting as head of legal and tax for the RTL group. He has also worked with Fidelity Investments as senior legal counsel for continental Europe.

François is fluent in English, French, German and Luxembourgish and regularly provides presentations at various domestic and international events.

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# Stéphane Hadet, Partner, Banking & Finance

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Stéphane is a partner within the firm's banking & finance practice. His key practice areas include banking & finance, mergers and acquisitions, corporate law and general business law

With around 15 years of experience, Stéphane focuses on projects related to general banking & finance law and secured lending transactions.

A French national, Stéphane graduated from the University of Nancy II (France) and has been a member of the Luxembourg Bar since 1994. He speaks many languages including English, French, Italian and Spanish.

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# Delphine Tempé, Partner, Corporate

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Delphine is partner within the firm's corporate practice and focuses on key areas such as mergers and acquisitions, corporate, and general business law.

Delphine has many years experience in international business law and has a strong history of supporting leading companies, particularly private equity firms and financial institutions on a wide range of major international transactions. She has particular experience with mergers and acquisitions and refinancing projects.

A French national, Delphine graduated in law from the University of Strasbourg (France) and the University of Durham. She speaks English and French. She has been member of the Luxembourg Bar since 1997,

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# Chokri Bouzidi, Principal, Tax (London)

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Chokri heads up the firm's Luxembourg tax practice in London and specialises in the areas of taxation, M&A and structured finance.

Chokri advises mainly private equity and international financial groups and multinational businesses on direct and indirect tax matters. He has broad experience of structuring cross border transactions through Luxembourg and has a strong background in regulated and non-regulated real estate funds.

After practicing a number of years in Paris and Amsterdam, Chokri gained experience in Luxembourg direct and indirect taxation at a number of Luxembourg law firms. Chokri speaks English, French and Arabic

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