



MANAGEMENT & CORPORATE GOVERNANCE

GUIDANCE NOTES FOR BOARD MEMBERS

INTRODUCTION

By LuxCMA Best Practice Working Group
Management & Corporate Governance

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INTRODUCTION

Luxembourg is the leading European financial centre for the administration of Financial Vehicle Corporations (“**FVC**”s) engaged in securitisation transactions. The outstanding amount of debt securities issued by the euro area FVCs was in excess of €2.100 bn at the end of September 2021 through more than 4.400 vehicles. More than 1.300 of those have been established in Luxembourg¹.

The purpose of this Guidance Note is to provide Board members of Luxembourg securitisation transactions with some background of the specifics of these types of structures and some insight on areas of attention.

Whilst the usual capacity and qualification requirements, the governance rules and director responsibilities apply to all Board members, there are some additional points to consider in securitisations.

FVC transactions can be highly complex, but also highly documented transactions and obtaining access to the right level of information and documentation is critical when it comes to the performance of a Board member mandate.

Whilst most FVCs will follow the same core principles, such as the pass-through nature of the vehicles, the adherence to limited recourse and non-petition language or the pre-defined legal and financial mechanics set out in the documentation, the adherence to strong corporate governance is imperative to ensure that the company is in good standing.

The auto-pilot nature of the structures should give directors little need to exercise discretionary decisions, however in case of an event of default or work-out scenario, the absence of guidance by the shareholder or a Security Trustee taking over the control will lead to an increased pressure to take decisions. The ever more complex regulatory or legal framework, such as EMIR, FATCA, CRS, LIBOR, VAT, ATAD, UBO Register, mandatory disclosure rules – DAC 6, etc, especially if not yet embedded in the transaction documentation, does add its own level of complexity and need for

¹ Source: European Central Bank

Board members to step up and ensure that the planned transactions are continued in such (changed) environment.

The protection of the Noteholder's interests is equally of essence. Whilst the Noteholders may not be known in most cases, their rights, needs and interests must be at the centre of the Board's attention.

The Board does though not stand alone and may consult with advisors and, under certain conditions, some transaction parties.

The understanding of the impact of legal or regulatory requirements is key to ensure full compliance.

There are also oversight obligations on the Board to ensure that delegated tasks are performed properly and that appropriate policies, procedures and escalation protocols exist. If the arranging Bank is also a counterparty to the transaction, e.g. because it has sold off a portfolio of assets, but remains involved as Servicer and is in the same time the one providing the valuation of the assets, the conflicts of interests must be understood and documented. Equally, the segregation of duties, any Chinese walls and the accuracy of the delegated tasks must be assessed. In some cases, a regular on-site visit to certain transaction parties may be advisable.

Finally, the preparation of financial statements and annual accounts will require a particular attention. In order to prepare accurate financial records, the Board needs effective access to the required information including the valuation of the assets. The following sections will provide with some asset or strategy specific reports that the Board should have access to.

LuxCMA intends to publish several strategy specific guidance notes, which will focus on the specific requirements imposed on FVCs. These will however leave the general corporate law matters aside.

The following are planned transaction specific guidance notes recommendations:

- CLO / CBO
- Leasing
- Future Receivables
- Supply Chain Finance
- Direct Lending

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- Project Finance
- Repackaging
- Loan Participation Notes
- Introduction to EU Securitisation
- Non-performing Loans
- Mortgage Backed Securities

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Created on 1 March 2019, the LuxCMA is a not-for-profit association (a.s.b.l.), registered at the RCSL (F12205), whose registered office is 6 rue Jean Monnet, L-2180 Luxembourg. The LuxCMA today represents memberships detailed on LuxCMA's website (www.luxcma.com), which is composed by banks, law firms and services providers, amongst others.

Working Group – Best Practice

The aim of this working group is to find practical solutions (or answers) to practical problems. Capital market participants are often confronted with varying practices among the numerous practitioners active in Luxembourg, including when it comes to compliance, accounting, presentation of the financial statements, clearing, reporting, or general legal questions, and the purpose of the group will be to identify any recurring problems or inconsistencies in such practices and to analyse whether it is possible to work out practical recommendations and good market standards which address such issues.

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