



COLLATERALISED LOAN OBLIGATIONS (“CLOs”):

A NEW DAWN FOR LUXEMBOURG

WORKING GROUP | SECURITISATION

JULY 2022

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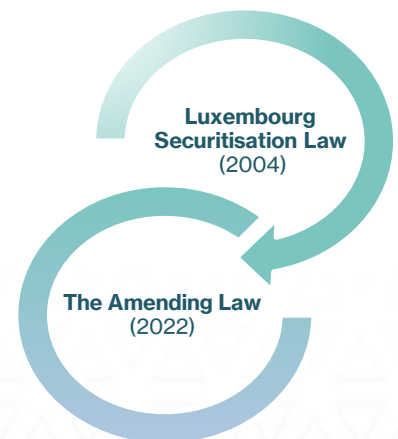
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Since the enactment of the Luxembourg Law of 22 March 2004 on securitisation, as amended (the “Luxembourg Securitisation Law”), Luxembourg has proven to be one of the prime choices for European and international securitisation and structured finance transactions. Over the coming years, Luxembourg is expected to contribute significantly to the redevelopment of the European securitisation market, in accordance with the European Commission’s Capital Markets Union Action Plan and its goal to scale-up the securitisation market in the European Union (EU).

With more than 1,400 securitisation vehicles (including sometimes hundreds of compartments) pursuing securitisation activities for a total amount of EUR 387bn registered in Luxembourg in March 2022, the Luxembourg securitisation market continues to show a positive trend.

The unique toolbox of legal solutions enabling arrangers to tailor their products to the investor needs makes Luxembourg one of the major hubs for securitisation transactions in the EU.

In order to further improve the structuring options, increase the flexibility and ensure legal certainty of the Luxembourg Securitisation Law, on 9 February 2022, the Luxembourg Parliament has voted an amendment to the Luxembourg Securitisation Law (the “Amending Law”). This has since been published in the Luxembourg official journal on 4 March 2022 and is effective as of 8 March 2022.



Since the introduction of the Luxembourg Securitisation Law, the securitisation market had evolved and clarification of some points of the existing legal framework was long-awaited.

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The Amending Law still retains the proven concept of creating insolvency-remote compartments and adds further flexibility in structuring securitisation transactions. Firstly, it allows for additional corporate forms of securitisation vehicles, along with new sources of financing through loans on an exclusive basis. Moreover, in the Amending Law, the options for funding securitisation transactions are broadened by replacing the general reference of issuance of securities with the options to issue financial instruments. Furthermore, it gives a broader scope of possible collateral arrangements by allowing a securitisation undertaking to grant collateral in favour of all parties involved in a securitisation transaction. Finally, and maybe most importantly, the Amending Law permits the active management of debt portfolios.



Additional forms of
securitisation vehicles



New sources of financing



Broader scope of possible
collateral arrangements

Albeit occasionally, there were actively managed securitisation structures in the market for unregulated undertakings, there remained an uncertainty whether management by a securitisation undertaking should be limited to the administration of the financial flows linked to the securitisation transaction and to a “prudent-man” management of the securitised risks.

The Amending Law now explicitly permits active management of the securitised debt portfolios within certain restrictions.

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Luxembourg securitisation undertakings may now securitise a pool of risks consisting of debt securities, financial debt instruments or receivables which are actively managed, either by the undertaking itself, or by a third party. Such third party can be an investment manager or collateral advisor, which would on behalf of the securitisation undertaking, carry out investments into eligible assets and then manage the portfolio on an opportunistic basis.

This is particularly relevant for CLO structures¹ as it is now allowed to securitise actively managed structures in private placements.

CLO

• Collateralised Loan Obligation

With the Amending Law, the securitised assets constituting the initial pool of assets of the securitisation undertaking can be replaced following the transaction date in order to decrease the credit risks, increase the performance and create profit. Securitisation undertakings will have to expressly specify in their constitutive documents (articles of association or management regulations) if they wish to actively manage their securitised portfolio.



The Amending Law is further in accordance with the European Central Bank's interpretation of securitisation and provides legal certainty to set up such structures also in Luxembourg, while previously the European market of CLOs was more focused on other jurisdictions.

Overall, the changes introduced by the Amending Law provide greater flexibility and legal certainty by adding new tools that can be used in securitisation structures, in line with both EU legislation and market practice in other EU jurisdictions. Together with the EU Securitisation Regulation, the Amending Law provides a comprehensive toolkit for the European securitisation market and ensures that the regulatory framework enables securitisation to play its part in the EU Capital Markets Union.

¹ For more information on CLOs, please refer to the [LuxCMA Guidance Notes for board members: Collateralised Loan Obligation \("CLO"\)](#).



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