



# GUIDANCE NOTE FOR BOARD MEMBERS

# FINANCIAL STATEMENTS AND DISCLOSURES

WORKING GROUP | BEST PRACTICE  
ACCOUNTING & REPORTING

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## INTRODUCTION – FINANCIAL STATEMENTS AND DISCLOSURES

The Luxembourg [Law of 22 March 2004](#) on securitisation, as amended (hereafter the “**Securitisation Law**”) does neither provide any detailed information on the disclosure of the financial statements of a securitisation vehicle nor does it define any requirements of securitisation specific account treatments.

Article 47 of the Securitisation Law only requires that a securitisation company complies with the provisions of Section XIII of the amended Luxembourg [Law of 10 August 1915](#) on commercial companies, as consolidated by the [Council Implementing Regulation \(EU\) 2017/2459](#) of 5 December 2017 (hereinafter the “**Commercial Law**”), and with the provisions of the Chapters II and IV of the Luxembourg [Law of 19 December 2002](#) on the Register of Commerce and Companies and the Accounting and Annual Accounts of Undertakings, as amended (hereinafter the “**Accounting Law**”), defining the accounting and disclosure requirements for Luxembourg companies.

For Securitisation Funds, Article 50 of the Securitisation Law refers to accounting and tax provisions applicable to undertakings for collective investment provided for by the Luxembourg [Law of 30 March 1988](#) repealed by the Luxembourg [Law of 20 December 2002](#), as amended, relating to undertakings for collective investment.

One of the key features of the Securitisation Law is a possibility to create compartments in a securitisation company and in a securitisation fund.

As there are no clear guidelines in the market as to the sufficiency and level of detail of the main disclosures for a securitisation vehicle, **LuxCMA** created this paper with the purpose of providing information and guidance to the various stakeholders who prepare or use the financial statements of a Financial Vehicle Corporation (**FVC**). It also aims to harmonise the level of disclosure in the financial statements of FVCs across the market.

Terms and abbreviations used in this publication are defined in the glossary at the end of the document.

## PART A: SECURITISATION COMPANIES AND FUNDS (“FVC”)

### DISCLOSURE OF COMPARTMENTS IN THE FINANCIAL STATEMENTS

As per Article 5 of the Securitisation Law, the articles of incorporation of an FVC may authorise the management body to create one or more compartments, each compartment corresponding to a distinct part of its assets and liabilities.

The financial statements of an FVC include a balance sheet and a profit and loss account, which will be disclosed, in the majority of cases, under **eCDF** format. As a consequence of the current legislation, the figures are disclosed and published on a combined basis in the financial statements. Therefore, no information about the financial situation of a compartment is provided although investors invest in a specific compartment and not in the whole FVC. Consequently, to meet each investor's information needs, which also will satisfy the information needs of various other stakeholders, the financial statements should contain sufficiently detailed information about the financial situation of each compartment.

Luxembourg GAAP (**LUX GAAP**) is a general purpose framework and financial statements under these GAAP, consisting of a balance sheet, a profit and loss account and the notes to the financial statements, must meet the needs of a wide range of users.

#### **International Standards on Auditing (ISA) requirements**

Article 8. of the [International Standards on Auditing \(“ISA”\) 700 \(Revised\)](#), *Forming an Opinion and Reporting on Financial Statements*, defines "financial statements" as "a complete set of general purpose financial statements, including the related notes".

While the "general purpose financial statements" are defined in Article 7. (a) as “Financial statements prepared in accordance with a general purpose framework”, and further in Article 7. (b) as "a financial reporting framework designed to meet the common financial information needs of a wide range of users. The financial reporting framework may be a fair presentation framework or a compliance framework. ".

The term “fair presentation framework” is used to refer to a financial reporting framework that requires compliance with the requirements of the framework and:

- (i) Acknowledges explicitly or implicitly that, to achieve fair presentation of the financial statements, it may be necessary for management to provide disclosures beyond those specifically required by the framework; [...].”

Due to the legal segregation of compartments, investors in different compartments are usually different and require different information about the compartments. Therefore, the financial statements shall meet the needs of these different users and provide disclosure beyond specifically required by the framework.

As a consequence, the financial statements shall contain sufficiently detailed information about each of the compartments. As the eCDF format of the balance sheet and profit and loss accounts does not provide this information, it shall be provided in the notes to the financial statements. As such, a balance sheet and profit and loss account per compartment should be included as part of the notes to the financial statements.

### **Accounting Law requirements**

Beside the **ISA** requirements, Article 2 (3) of the coordinated version of the [Law of 17 June 1992](#) relating to the annual and consolidated accounts of credit institutions governed by the laws of Luxembourg requires that “The annual accounts shall give a true and fair view of the company’s assets, liabilities, financial position and profit or loss.”

Article 2(4) states that “Where the application of the provisions of this law would not be sufficient to give a true and fair view within the meaning of paragraph (3), additional information must be given.” Paragraph (5) then goes on to state that the preparer must depart from the provisions laid down in the text of the law in order to give a true and fair view.

Disclosure of the balance sheet and profit and loss accounts of the compartments outside of the notes to the financial statements, which are unaudited, would not meet the needs of the users of the financial statements as it would not provide them with sufficiently reliable, i.e. audited, information on the financial situation of each compartment.

## PRESENTATION OF INTER-COMPARTMENT ELIMINATIONS

In multi-compartment structures, it may be the case that the compartments have transactions between one another. Such transactions usually occur due to recharging of the operational and other external expenses from the general/capital compartment, which pays for such expenses, to the operational compartments, which benefit from these services.

A reconciliation mismatch may arise when in a note to the financial statements the sum of the compartment balances does not equal the amount in the combined balance sheet or profit and loss account. To address this mismatch, a disclosure note will need to show the elimination of these inter-compartment balances.

<b><u>Balance sheet</u></b>	GC	C1	C2	Inter-compartment eliminations	Combined figures
<i>Other debtors - becoming due and payable within one year</i>	<b>8,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>-8,000.00</b>	<b>0.00</b>
- accounting fees (receivable from Compartment 1)	4,000.00			-4,000	-
- accounting fees (receivable from Compartment 2)	4,000.00			-4,000	-
<i>Other creditors - becoming due and payable within one year</i>	<b>-8,000.00</b>	<b>-4,000.00</b>	<b>-4,000.00</b>	<b>8,000.00</b>	<b>-8,000.00</b>
- accounting fees (payables to external party)	-8,000.00				-8,000
- accounting fees (payables to General Compartments)		-4,000	-4,000	8,000	0
<b><u>Profit and loss account</u></b>					
<b>Other external expenses</b>	-8,000	-4,000	-4,000	8,000	-8,000
<b>Other operating income</b>	<b>8,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>-8,000.00</b>	<b>0.00</b>
Accounting fees Compartment 1	4,000			-4,000	-
Accounting fees Compartment 2	4,000			-4,000	-

## DISCLOSURE FOR THE PORTFOLIO OF UNDERLYING ASSETS

In addition to the disclosure of movements in the portfolio of underlying assets during the year required by law (i.e. opening balance, additions, disposals, value adjustments, etc.), it is best market practice to disclose the nature of the underlying assets. The level of detail varies and may include maturities, names of individual borrowers (for loan portfolios), currency composition, interest rate range, available guarantees, and any other information that meets the needs of a wide range of users.

## DISCLOSURE FOR THE FINANCIAL INSTRUMENTS ISSUED

Best market practice is to disclose the major terms and conditions of the financial instruments issued and their nature including, but not limited to, maturity, currency, interest per annum and periodicity in which principal and interest are (re)paid to investors. This

disclosure may also address the effect and movement of the equalisation provision, if any, on the financial instruments issued with a limited recourse feature.

### ADDITIONAL DISCLOSURES FOR EU PUBLIC INTEREST ENTITIES (“PIE”) STRUCTURES

Article 1 (20) (a) of the [Law of 23 July 2016](#) concerning the audit profession (hereinafter the “**Audit Law**”) defines “public interest entities” as follows:

The “entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market<sup>1</sup> of any Member State within the meaning of point (21) of Article 4 (1) of Directive 2014/65/EC<sup>2</sup> [...]”.

In addition to the standard disclosures for an FVC, entities with securities listed on an EU-regulated market need to disclose the followings:

- **The total fees for the financial year received by each approved statutory auditor or the approved audit firm:** Article 65. (16) of the Accounting Law requires the disclosure of “the total fees for the financial year received by each approved statutory auditor or the “*cabinet de revision agréé*” [approved audit firm] for the statutory audit of the annual accounts and, the total fees received by each approved statutory auditor or the “*cabinet de révision agréé*” [approved audit firm] for other assurance services, for tax advisory services and for other non-audit services [...]”.
- **A management report:** Article 68. (1) of the Accounting Law states that “companies incorporated under Luxembourg law as referred to in Article 1 of Council Directive 78/660/EEC of 25 July 1978 must draw up a management report, which must at least include a fair review of the development of the Company’s business, its performance and its position, together with a description of the principal risks and uncertainties that it faces [...]”.
- **A corporate governance statement:** Article 68<sup>ter</sup> of the Law of 10 August 1915, as amended - “any company whose securities are admitted to trading on a regulated market [...] of a Member State shall include a corporate governance statement in its management report. [...]”.

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<sup>1</sup> For a definition of these terms, see Article 4 (21) of the [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast)

<sup>2</sup> Known as ‘MiFID II’ (Markets in Financial Instruments Directive)

<sup>3</sup> Article renumbered following the Law of 23 July 2016 on the publication of non-financial information.

## MANAGEMENT REPORT AND AUDIT COMMITTEE REQUIREMENTS

### MANAGEMENT REPORT

Entities are required to present a management report, unless, pursuant to Art. 68 (3) of the Accounting Law, if they are small-sized companies whose securities are not admitted to trading on an EU-regulated market and if they have disclosed the information regarding the acquisition of own shares in the notes to the annual accounts.

Pursuant to Art. 75. and 75a. (e) of the Accounting Law, the approved statutory auditor(s) shall state in their audit opinion whether the management report is consistent with the financial statements and whether it has been prepared in accordance with the applicable legal requirements for the same financial year.

The management report must include at least a fair review of the development of the company's business, its results and position providing clarification on the data shown in the financial statements, together with a description of the main risks and uncertainties the company is facing. This description consists of a balanced and exhaustive description of the evolution of the business, results and financial situation of the company, linked to the volume and complexity of the business.

To understand the company's development, performance or position, the analysis should include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information related to environmental and employee matters. In presenting its analysis, the management report should, where appropriate, include references to and additional explanations of amounts reported in the financial statements (small and medium-sized companies whose securities are not listed on an EU-regulated market are exempt from providing non-financial information).

The management report shall also give an indication of:

- (i) The likely future development of the company;
- (ii) The activities in the field of research and development;
- (iii) In respect of the acquisitions of own shares<sup>4</sup>:
  - a. The reasons for the acquisitions made during the financial year;
  - b. The number and the nominal value, or in the absence of a nominal value, the accounting par value, of the shares acquired and disposed

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<sup>4</sup> Please refer to Art. 430-18 (2) of the Commercial Law.



of during the year and the proportion of the subscribed capital which they represent;

- c. In case of acquisition or disposal for value, the consideration for the shares; and
- d. The number and nominal value, or, in the absence of nominal value, the accounting par value, of all the shares acquired and held in the company's portfolio as well as the proportion of the subscribed capital which they represent.

(iv) The existence of branches of the company;

(v) In relation to the undertaking's use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss:

- a. The company's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used, and
- b. The company's exposure to price risk, credit risk, liquidity risk and cash flow risk.

(vi) The transactions carried out under Art. 420-26 (6) of the Commercial Law in relation to the allocation of free shares.

Pursuant to the [Law of 19 May 2006](#) transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as amend (herein the "**Takeover Law**") listed companies are required to disclose in their management report additional information (as described in Art. 11 (1) (a) – (k) of the aforementioned law) regarding their securities and voting rights but this would not usually apply to securitisation companies or securitisation funds.

According to Art. 68bis of the Accounting Law, certain large public interest entities with more than 500 employees are required to prepare additional non-financial statements as described in point (2) of Article 11 above, but similarly this would not normally apply to securitisation companies or securitisation funds.

### CORPORATE GOVERNANCE STATEMENT

A company whose securities are admitted to trading on a EU-regulated market shall include a corporate governance statement in its management report. The information to be included in such a statement is set out in Art. 68<sup>ter</sup> of the Accounting Law.

Undertakings that have only issued securities other than shares that are admitted to trading on a regulated market in the EU and are not subject to the Takeover Law need only include a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process.

The approved statutory auditor is required to review and express an opinion on the information described above (pursuant to Art. 68<sup>ter</sup> (3) of the same law).

### RESPONSIBILITY STATEMENT

Companies subject to the [Law of 11 January 2008](#) on transparency requirements for issuers shall include in their financial statements and half-yearly financial report the statements made by the persons responsible within the company, whose names and functions must be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole, and, that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

The interim management report shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year. For issuers of shares, the interim management report shall also include major related parties' transactions.

### AUDIT COMMITTEE REQUIREMENTS

In some cases, a Luxembourg FVC qualifies as a Public Interest Entity (“PIE”) within the meaning of Article 1, point (29) of the Audit Law.

In accordance with Article 52, paragraph (1) of the Audit Law, such a FVC shall have an audit committee unless:

- The PIE benefits from simplification measures in accordance with Article 52, paragraph (2) of the Audit Law and the Board of directors/Supervisory board is acting as audit committee; or
- The PIE is exempt from the requirement to set up an audit committee in accordance with the provisions of Article 52, paragraph (5) of the Audit Law.

An additional report of the approved statutory auditor to the audit committee, as defined in Article 11 of the [Regulation \(EU\) No 537/2014](#) of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities, is required when an audit committee is required by law.

The additional report is not required when an audit committee is set up on a voluntary basis.

When the audit committee is not required by the Audit Law, the responsibilities assigned to the audit committee are not transferred to the Board of directors.

Therefore, the approved statutory auditor is not required to prepare an additional report if the FVC is exempted from the requirement to set up an audit committee.

Such an exemption is regularly referred to Article 52, paragraph (5) of the Audit Law for PIEs whose sole business is to act as issuer of asset-backed securities as defined in the [Commission Regulation \(EC\) No 809/2004 of 29 April 2004](#),<sup>5</sup> Article 2, point (5). In that case, the FVC shall explain to the public the reasons why it considers that it is not appropriate for it to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee.

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<sup>5</sup> Implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements.

## **PART B: SPECIFIC FOR SECURITISATION FUNDS**

### **DISCLOSURES FOR A SECURITISATION FUND**

A securitisation fund is subject to the accounting and tax regulations applicable to Undertakings for Collective Investments ("UCIs") provided by the [Law of 17 December 2010](#) relating to undertakings for collective investment, as amended (the "**Fund Law**").

The layout of the annual report would be oriented at Article 151 (3) and (4) of the Fund Law, thus containing:

- A balance sheet or statement of assets and liabilities;
- A detailed income and expenditure account for the financial year;
- A report on the activities of the past financial year;
- The other information provided for in Schedule B of Annex I of the Fund Law; and
- Any significant information necessary for investors judgement on the development of the activities and the results of the fund.

The annual report of a securitisation fund has to contain the other information provided for in Schedule B annexed to the Fund Law as follows:

- (i) Statement of assets and liabilities;
- (ii) Number of units in circularisation;
- (iii) Net Asset Value (NAV) per unit;
- (iv) Portfolio breakdown distinguished by type of asset and analysed based on most appropriate criteria in light of the securitised risks;
- (v) Statement of developments concerning the assets during the period; and
- (vi) A comparative table covering the last three financial years of the NAV per unit.

## GLOSSARY AND ABBREVIATIONS

This paper is part of a series of guidance notes for Board Members and we encourage you to read the additional papers focusing on different types of transactions and underlying assets available on our [website](#).

<b>A</b>	<b>Accounting Law</b>	means the Luxembourg <a href="#">Law of 19 December 2002</a> on the Register of Commerce and Companies and the Accounting and Annual accounts of Undertakings, as amended, which sets out the accounting and disclosure requirements for Luxembourg companies.
	<b>Audit Law</b>	means the Luxembourg <a href="#">Law of 23 July 2016</a> concerning the audit profession.

<b>C</b>	<b>Commercial Law</b>	means the Luxembourg <a href="#">Law of 10 August 1915</a> on commercial companies, as consolidated by the <a href="#">Council Implementing Regulation (EU) 2017/2459</a> of 5 December 2017.
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<b>E</b>	<b>eCDF</b>	stands for “électronique de Collecte des Données Financières” and refers to the Luxembourg platform for electronic gathering of financial data. Its main purpose is to provide a central and neutral platform for the preparation, the validation and the electronic transmission over the Internet of financial data that must be provided to the State (all types of periodic and annual declarations, annual accounts, chart of accounts,...).
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<b>F</b>	<b>Fund Law</b>	means the Luxembourg <a href="#">Law of 17 December 2010</a> on Undertakings for Collective Investments, as amended (also known as UCI Law).
	<b>FVC</b>	means Financial Vehicle Corporation. This term, used in other LuxCMA publications, is defined by the <a href="#">European Central Bank</a> (“ECB”) as engaging in “securitisation”, where securitisation is defined as “ <i>a transaction or scheme whereby an entity that is separate from the originator [...] and is created for or serves the purpose of the transaction or scheme issues financing instruments to investors, and one or more of the following takes place: an asset or pool of assets, or part thereof, is transferred to an entity that is separate from the originator and is created for or serves the purpose of the transaction or scheme [...].</i> It therefore implies that there is a transfer of assets from the originator to the securitisation entity for the entity to qualify as “securitisation” under the <a href="#">Regulation (EC) N° 24/2009</a> of the ECB and for the Securitisation Vehicle (“SV”) to qualify as a FVC.
<b>I</b>	<b>ISA</b>	means International Standards on Auditing. These are professional standards for the auditing of financial information, issued by the International Auditing and Assurance Standards Board ( <a href="#">IAASB</a> ).
<b>L</b>	<b>LuxCMA</b>	means the Luxembourg Capital Markets Association, a not-for-profit association created on 1 March 2019 which represents the common interests of all stakeholders of the primary capital markets industry of Luxembourg.
	<b>LUX GAAP</b>	means Generally Accepted Accounting Principles in Luxembourg, applicable to the circumstances as of the date of determination, consistently applied.

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<p><b>S</b></p>	<p><b>Securitisation Law</b></p>	<p>means the Luxembourg <a href="#">Law of 22 March 2004</a> on securitisation, as amended, governing Luxembourg securitisation vehicles.</p>
<p><b>T</b></p>	<p><b>Takeover Law</b></p>	<p>means the Luxembourg <a href="#">Law of 19 May 2006</a> transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as amended.</p>
<p><b>U</b></p>	<p><b>UCIs</b></p>	<p>means Undertakings for Collective Investment and refers to those investment funds established in accordance with the provisions of the amended Luxembourg Law of <a href="#">17 December 2010</a> (the "UCI Law", also known as the "Fund Law"), implementing <a href="#">EU Directive 2009/65/EC</a> of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS).</p>



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### **About the LuxCMA – Luxembourg Capital Markets Association**

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](#), which is composed by banks, law firms and services providers, amongst others.

### **Working Group I Best Practice – Accounting & Reporting**

The aim of this working group is to find practical solutions (or answers) to practical problems. The Accounting & Reporting sub-group brings together the main players in the Luxembourg corporate services and accounting community to address various issues related to capital market accounting and reporting. Capital market participants are often confronted with different practices among the numerous practitioners active in Luxembourg with regard to accounting, financial statement presentation and reporting.

The purpose of the group is to identify any recurring issues or inconsistencies in such practices and to analyse whether it is possible to develop practical recommendations and good market standards that address such issues and harmonise the market approach among the various players.

For more information, please contact [info@luxcma.lu](mailto:info@luxcma.lu).

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