

EXPLANATIONS CONCERNING THE AUTHORISATION PROCEDURE FOR A SECURITISATION UNDERTAKING

Articles 19 to 21 of the law of 22 March 2004 on securitisation (the "2004 Law") lay down the legal requirements that must be met in order to obtain an authorisation as authorised securitisation undertaking. Securitisation undertakings whose securities are issued to the public on a continuous basis (Article 19 of the 2004 Law) are required to be subject to the CSSF's prudential supervision.

Article 22 of the 2004 Law provides that authorised securitisation undertakings shall entrust the custody of their liquid assets and securities with a credit institution established or having its registered office in Luxembourg. Article 48(1) provides that the accounts of a securitisation undertaking shall be audited by one or more *réviseurs d'entreprises* (statutory auditors) appointed, as the case may be, by the management body of the securitisation company or by the management company of the securitisation fund.

I. Legal requirements

The constitutional documents

The CSSF approves the articles of incorporation or the management regulations of the securitisation undertaking and authorises, where applicable, its management company. This procedure also applies to existing securitisation undertakings that seek authorisation only after having made, for a certain period of time, securitisation transactions as non-supervised entities. In this case, information on the issues already carried out, as well as on the financial situation of the securitisation undertaking or the management company of a securitisation fund, respectively, should be attached to the application file.

Organisation and administration

The administrative and accounting organisation put in place through delegated functions, where appropriate, should ensure that the securitisation undertaking has an appropriate organisation and appropriate human and material resources to perform its activity properly and in a professional manner. The structuring of the technical aspects of the securitisation transactions may be delegated, including to foreign professionals. In that case, an appropriate information exchange mechanism between the delegated functions and the Luxembourg entity administering the securitisation undertaking must be set up as from the incorporation of the securitisation undertaking.

The organisational and administrative structure in Luxembourg of a securitisation undertaking subject to authorisation must enable the managers of the securitisation undertaking to perform their coordination and supervision role in relation to the delegated functions activity and the *réviseur d'entreprises* and the CSSF to perform their controls. Thus, all administrative information and all key information relating to the technical aspects must be in Luxembourg, i.e. the accounting documents and other documents which constitute the key documentation of the securitisation undertakings must be available upon the first request of the CSSF. The administrative substance of the company must thus be available in Luxembourg and the CSSF assesses the structure and the administrative management of the securitisation undertaking on a case-by-case basis.

Managers and shareholders

In order for the CSSF to assess the capacities of the persons involved in the structure, the securitisation undertaking must communicate to the CSSF the names of the arranger of the securitisation project, of its managers (i.e. the members of the administrative, management and supervisory bodies), and of the beneficial owner(s). Information on the name and powers of the representative of the debtholders is also to be provided, where appropriate.

The arranger of the securitisation project should be able to give comfort to the CSSF on the viability of the project, in particular by reference to the statutory requirement of the appropriate human and material resources. However, the arranger of the securitisation project is under no financial requirements or completion guarantee.

For the purpose of obtaining authorisation, Article 20(2) of the 2004 Law provides that natural persons, and in the event of legal persons *"The members of the administrative, management and supervisory bodies of a securitisation company or a management company of an authorised securitisation undertaking, as well as its direct or indirect shareholders which are in a position to exercise a significant influence over the conduct of the business of such a company must be of sufficiently good repute and have the experience or means required for the performance of their duties. To that end, the names of those persons, and of every person succeeding them in office, must be notified forthwith to the CSSF. "*

Professional standing shall be assessed on the basis of police records and of any evidence tending to show that the persons concerned are of good repute and offer every guarantee of irreproachable conduct.¹ This general requirement of irreproachable business shall in particular ensure the confidence of the public in authorised entities and ensure the Luxembourg financial centre's good repute. The presentation of all the guarantees of irreproachable business includes for instance all the personal and professional characteristics which allow an individual to properly manage a professional supervised by the CSSF. The past and present professional activities of a person are substantial elements to assess and evaluate the professional standing of this person when considering his future activities in the sector.

In respect of the directors of a securitisation undertaking or the management company of a securitisation fund which must be at least three, the CSSF requires that they have solid professional experience in the securitisation field in order to be deemed acceptable so that they can administer, in a professional way, the securitisation company or the management company of a securitisation fund, respectively. If there is no representative of the arranger of the securitisation project among the members of the board of directors, it is especially important that the directors of the securitisation undertaking have the experience, skills and means required to understand and to monitor independently all financial, legal and accounting techniques used in the context of such a securitisation.

The CSSF accepts that the directors' mandates are given to legal persons exclusively. In such case, the CSSF assesses the criteria regarding the directors' competence and professional standing as regards the legal persons and as regards the natural persons designated to represent the directors that are legal persons. Thus, the representatives of the directors must prove their professional standing and their professional experience.

Any director must be aware of the financial situation of the securitisation undertaking and must assume his responsibility *vis-à-vis* the investors and the CSSF.

¹ Cf. Question 10 of "Questions and Answers on how to obtain authorisation as PFS" on the CSSF's website: <http://preprod-p.cssf.lu/en/supervision/pfs/inv-firm/faq/>

II. Procedure

Article 19 of the 2004 Law specifies that securitisation undertakings which issue securities to the public on a continuous basis² ("authorised securitisation undertakings") must be authorised by the CSSF to exercise their activities. If a securitisation undertaking intends to carry out transactions which are likely to meet each of the two criteria "on a continuous basis" and "to the public", it must first request (i.e. before starting an activity complying with these two criteria) the CSSF's authorisation. The securitisation undertaking must make this assessment under its own responsibility and then spontaneously contact the CSSF, where appropriate.

The application for authorisation must be filed by the arranger of the securitisation undertaking (or by a proxy of this person or of the securitisation undertaking) with the CSSF. Upon receipt of an application file for a new securitisation undertaking, the CSSF systematically invites the arranger of the securitisation undertaking's project to present the project in a meeting. The CSSF grants the authorisation after examination of the file and verification of the legal requirements. Authorised securitisation undertakings are registered by the CSSF on a list. This registration is tantamount to authorisation and is notified by the CSSF to the authorised securitisation undertaking concerned.

Once authorised, the securitisation undertaking remains in principle under the supervision of the CSSF until the closing of its liquidation. However, if, at some point, the securitisation undertaking stops issuing new securities to the public on a continuous basis and provided that all the securities that the securitisation undertaking issued to the public while it was subject to supervision have matured and been refunded, the securitisation undertaking may request the CSSF to be withdrawn from the official list of authorised securitisation undertakings.

The application for authorisation must contain all the data required for its scrutiny. Insofar as this information is available when the application is filed, it must include at least the following elements:

A. Target entity

1. A general description of the identity of the arranger of the securitisation project, including its articles of incorporation and the last audited financial statements.
2. The articles of incorporation and/or the management regulations of the securitisation undertaking or their drafts (including information on the shareholding structure of the securitisation undertaking or its management company for securitisation funds). For orphan structures, the articles of incorporation and/or constitutional documents of the shareholders and the names of their beneficial owners shall be transmitted.
3. A description of the origin and nature of the risks to be securitised as well as the asset valuation rules that the securitisation undertaking proposes to apply. Indication whether the assets are valued at fair value.
4. The types of securities to be issued by the securitisation undertaking.
5. The base prospectus as well as the draft documents relating to the first issue of securities or, for active securitisation undertakings, the agreements relating to the issue of securities and other documents relating to securities already issued.
6. A description of the degree of synchronisation between the financial flows relating to the securitised risks and the financial flows relating to the securities issued by the securitisation undertaking.
7. Information relating to the credit institution responsible for the custody of assets and the nature of the assets which will be deposited (liquid assets and/or securities).

² The CSSF refers to Question 4 of the Frequently Asked Questions - Securitisation which explains the criteria "on a continuous basis" and "to the public".

8. Information concerning the administrative and accounting organisation of the securitisation undertaking.
9. The agreements or draft agreements with all service providers (including an organisation chart with the different functions).
10. An indication whether the securitisation undertaking carries out ancillary activities.
11. A description of the debtholder representation mechanism and, where appropriate, the contract (or the draft contract) with a fiduciary-representative or any other debtholders' representative.

B. Board of directors and human means

12. The composition of the board of directors, the management or supervisory bodies of the securitisation undertaking or, where appropriate, its management company as well as the identity of the other managers of the securitisation undertaking or, where appropriate, of the management company and the *curriculum vitae* of these persons, dated and signed, (demonstrating their experience in respect of securitisation), the extracts from the police records, a copy of their identity card, as well as their declaration of honour (cf. section Securitisation undertakings > Forms).
13. Where applicable, the names and description of the persons/entities responsible for the representation of investors (trustee etc.).
14. Where applicable, an indication of the persons likely to be assigned to administrative tasks.

C. Financing

15. A three-year financing plan including an exhaustive list of commissions, charges and income.
16. An indication of the names of the shareholders that are in a position to exercise significant influence on the business conduct of the securitisation undertaking or its management company and their articles of incorporation.
17. A description of the investors targeted by the issued securities and, where appropriate, the distribution mechanisms.
18. An indication whether loan agreements were or will be signed by the securitisation undertaking and on the type of loans and their objects. Where applicable, an indication on the nature of the financing (banking or other) and the percentage of the amounts *vis-à-vis* the issued securities.

D. Réviseur d'entreprises

19. An indication of the identity of the *réviseur d'entreprises agréé* (approved statutory auditor) and a copy of the management letter signed with the *réviseur d'entreprises agréé*.

E. Prevention of money laundering

20. For securitisation undertakings providing services to companies and trusts, an indication of the applied AML/CFT procedures (fight against money laundering and terrorist financing).

The CSSF reserves the right to request any other information it deems necessary to review the application file.