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Luxembourg Securitisation: Upgrade Patch 2026

At a glance

- **Scope:** targeted amendments to the Law of 22 March 2004 on securitisation, covering financing methods, cross-compartment investments, guarantees and security interests, active management and subordination rules.
- **Status:** Bill of Law No. 8761 is pending adoption.

Main amendments

Broader financing options

The current regime limits securitisation undertakings to raising funds through traditional financial instruments or loans. The reform broadens this by allowing any form of financial obligation to be used as a financing method, thereby accommodating alternative financing techniques, including Islamic finance structures. This removes the uncertainty surrounding financing arrangements that do not fall within the traditional concepts of loans or financial instruments and enables Luxembourg securitisation vehicles to accommodate a broader range of financing techniques.

One limitation remains unchanged: where financial instruments are offered to the public, they must continue to be financed through the issuance of financial instruments.

Cross-compartment investments

Prior to this amendment, there was no express basis for cross-compartment investments within the same securitisation undertaking and the Luxembourg Civil Code consolidation rule created a risk that obligations between compartments of the same vehicle could be extinguished. The reform addresses this by expressly permitting one compartment to invest in another compartment of the same vehicle, subject to two conditions:

- circular investments are prohibited (Compartment A may invest in Compartment B only if B has not already invested in A); and
- the investing compartment is treated as a third-party creditor, with full voting and economic rights — the Civil Code consolidation rule being explicitly disapplied.

This enables structures such as internal credit enhancement or multi-tranche repack arrangements to be implemented within a single vehicle. A junior compartment may, for instance, subscribe for notes issued by a senior compartment in order to provide internal credit support. Whereas such a structure would previously have required a separate SPV to avoid the risk created by the Civil Code consolidation rule, it may now be implemented within the same securitisation undertaking.

Guarantees and security interests

The 2004 Act previously allowed the securitisation undertaking to grant security only in respect of obligations "relating to the securitisation transaction". The reform replaces this with three clearly defined permitted cases:

- securing the undertaking's own obligations (e.g. notes issued by the securitisation undertaking to investors);
- securing obligations of third parties connected with the securitisation transaction (e.g. an originator or servicer); and
- securing obligations of third parties investing in the transaction (e.g. a bank providing a warehouse line facility or investor financing).

The third case is particularly significant in practice, as it expressly covers investor-side security arrangements that were previously difficult to document with certainty. Accordingly, where an investor finances the acquisition of notes through a lending bank, the securitisation undertaking may grant security directly in favour of that bank. Under the previous regime, the legal basis for such an arrangement was uncertain.

Active management

Under the current regime, active management is permitted only where financial instruments are not offered to the public. The reform leaves this restriction unchanged but clarifies that certain routine portfolio operations do not constitute active management, including replacement of defaulted, ineligible or warranty-breaching assets, asset additions during the ramp-up phase or in the context of continuous issuance, replacement of matured assets and marginal portfolio adjustments.

This provides a statutory safe harbour for managers of CLO-type, revolving or replenishing securitisation structures. As a result, routine portfolio maintenance, such as replacing defaulted or matured receivables, may be carried out without creating uncertainty as to whether those actions would breach the statutory limitation on active management.

Subordination rules

The current regime establishes that variable-rate debt instruments issued by a securitisation undertaking are subordinated to fixed-rate instruments. The reform clarifies that this subordination also applies relative to floating-rate instruments structured as a reference rate plus a fixed margin (e.g. Euribor plus a spread) — and that such instruments rank *pari passu* with fixed-rate instruments. The rationale is that both categories carry determinable remuneration independent of the vehicle's asset performance, and should therefore be treated equivalently for seniority purposes.

As a result, where a securitisation undertaking issues both fixed-rate notes and floating-rate notes linked to Euribor plus a fixed margin, the statutory ranking is now clear, confirming that those instruments rank *pari passu* rather than requiring the position to be inferred from the previous wording of the law.

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