

# **In case of discrepancies between the French and the English text, the French text shall prevail**

## **Law of 22 March 2004 on securitisation and amending**

- **the law of 5 April 1993 on the financial sector, as amended**
- **the law of 23 December 1998 creating a commission for the supervision of the financial sector, as amended**
- **the law of 27 July 2003 on the trust and on fiduciary contracts**
- **the law of 4 December 1967 on income tax, as amended**
- **the law of 16 October 1934 on wealth tax, as amended**
- **the law of 12 February 1979 on value added tax, as amended**

## TITLE I

### **Definitions**

**Art. 1.** (1) "Securitisation", within the meaning of this law, means the transaction by which a securitisation undertaking acquires or assumes, directly or through another undertaking, risks relating to claims, other assets, or obligations assumed by third parties or inherent to all or part of the activities of third parties and issues securities, whose value or yield depends on such risks.

(2) "Securitisation undertakings", within the meaning of this law, are undertakings which carry out the securitisation in full, and undertakings which participate in such a transaction by assuming all or part of the securitised risks - the acquisition vehicles - , or by the issuing of securities to ensure the financing thereof the issuing vehicles and whose articles of incorporation, management regulations or issue documents provide that they are subject to the provisions of this law.

## TITLE II

### **Securitisation undertakings**

#### **Chapter 1 – *Securitisation companies and securitisation funds***

**Art. 2.** Securitisation undertakings may be set up in the form of a company or a fund managed by a management company.

**Art. 3.** This law only applies to securitisation undertakings situated in Luxembourg. For the purposes of this law, securitisation companies which have their registered office in Luxembourg and securitisation funds whose management company has its registered office in Luxembourg are situated in Luxembourg.

#### *Section 1 – Securitisation companies*

**Art. 4.** (1) Securitisation companies must be set up as a public limited company (*société anonyme*), a corporate partnership limited by shares (*société en commandite par actions*), a private limited liability company (*société à responsabilité limitée*) or a co-operative company organised as a public limited company (*société cooperative organisée comme une société anonyme*) -

(2) Article 137 of the amended law of 10 August 1915 on commercial companies does not apply to securitisation companies set up as co-operative companies organised as a public limited company.

**Art. 5.** The articles of incorporation of a securitisation company may authorise the board of directors to create one or more compartments each compartment corresponding to a distinct part of its assets and liabilities.

## Section 2 – Securitisation funds and their management companies

### Sub-section 1 – Securitisation funds

**Art. 6.** (1) Securitisation funds consist of one or several co-ownerships or one or several fiduciary estates. The management regulations of the fund shall expressly specify whether the fund is subject to the co-ownership rules or to the trust and fiduciary rules.

(2) Securitisation funds do not have legal personality. They are managed by a management company.

(3) Securitisation funds which consist of one or more fiduciary estates are subject to the legislation on the trust and on fiduciary contracts.

(4) The provisions of the civil code relating to co-ownership in undivided shares (*indivision*) do not apply to securitisation funds.

**Art. 7.** (1) The rights of investors in the fund, whether such investors act as joint owners or settlors (*fiduciants*), are represented by securities issued in accordance with the management regulations.

(2) The ownership of registered securities is evidenced by an entry in the register held for such purposes by the management company. The transfer of such registered securities is effected by a declaration of transfer recorded in the register, dated and signed by the transferor and the transferee or evidenced as set out in the management regulations. The transfer of bearer securities is effected by mere delivery.

(3) The management regulations may also authorise the management company to issue dematerialised securities represented by book entries in an account held with the management company or an authorised professional of the financial sector acting on its behalf.

**Art. 8.** If provided for in the management regulations, a securitisation fund may consist of several compartments each compartment corresponding to a distinct co-ownership or fiduciary estate.

**Art. 9.** Debt instruments may be issued on behalf of the securitisation fund or one of its compartments.

**Art. 10.** (1) The management regulations of a securitisation fund shall contain at least the following provisions:

- an indication whether the fund is set up in the form of a co-ownership or fiduciary estate,
- the name, object and duration, limited or unlimited, of the securitisation fund,
- the name of the management company,
- the specific administration and management rules which apply to it,
- the possibility for the securitisation fund to consist of several compartments,
- the circumstances in which the fund or one of its compartments will be in, or may be put into, liquidation,
- the respective rights and obligations of the management company and, as the case may be, of the investors,
- the rules governing the assumption of risks and/or the issuance of securities,
- the procedures for amending the management regulations.

(2) Securitisation funds, consisting of several compartments, may determine by separate management regulations the characteristics of and the rules applicable to each compartment.

(3) The management regulations as well as subsequent amendments thereto must be lodged with the trade and company registry in accordance with the amended law of 10 August 1915 on commercial companies.

(4) The provisions of such regulations are deemed accepted by the investors in the securitisation fund by the mere acquisition of securities issued by the fund.

**Art. 11.** Without prejudice to Article 62, investors in a securitisation fund are only liable for the debts of the securitisation fund up to the assets of the fund and in proportion to their participation.

**Art. 12.** The securitisation fund shall be liable only for the obligations expressly imposed upon it by its management regulations or which it has contracted in conformity with the latter. It shall not be liable for the debts of the management company or of the investors.

**Art. 13.** (1) The liquidation of a securitisation fund is made public by the management company within a period of 15 days. Such publication is made through notices published in the *Mémorial, Recueil des Sociétés et Associations* and in at least two newspapers of adequate distribution, one of such newspapers being necessarily a Luxembourg newspaper.

(2) Once the liquidation has commenced, the issuance of securities is prohibited under penalty of voidance, except for the sake of the liquidation.

(3) Without prejudice to the preceding paragraph, the commencement of the liquidation is effective against third parties only as from the day of its publication in the *Mémorial*, except if the securitisation fund can establish that such third parties had prior knowledge thereof. Third parties may however rely upon the liquidation prior to its publication.

#### Sub-section 2 – Management companies

**Art. 14.** The management company is a commercial company whose object is to manage securitisation funds and, as the case may be, to act as fiduciary of funds consisting of one or more fiduciary properties.

**Art. 15.** (1) The management company shall draw up the management regulations for the securitisation fund.

(2) Without prejudice to the powers conferred upon a fiduciary-representative, the management company acts on behalf of the securitisation fund and its investors vis-à-vis third parties. It acts on their behalf in all judicial proceedings, whether as plaintiff or defendant, without having to disclose the identity of the investors, the sole indication that the management company is acting in such capacity being sufficient. As long as they are represented, the investors cannot individually bring actions, which fall within the authority of the management company.

**Art. 16.** The management company must perform its duties in an independent manner and in the sole interest of the securitisation fund and the investors. It may not use the assets of the securitisation fund for its own needs and it is liable towards the investors and third parties for the proper performance of its duties.

**Art. 17.** The creditors of the management company or of the investors have no rights of recourse against the assets of the securitisation fund.

**Art. 18.** The duties of the management company in respect of the securitisation fund shall cease:

- in the event of resignation or removal of the management company, provided that it is replaced by another management company, authorised, as the case may be, in accordance with the provisions of this law;
- if the management company has been declared bankrupt, has entered into a composition with creditors (*concordat*), has obtained a suspension of payment (*sursis de paiement*), has been put under court controlled management (*gestion contrôlée*), or has been the subject of a similar proceedings or has been put into liquidation,
- if, in the case of an authorised securitisation undertaking, the *Commission de Surveillance du Secteur Financier* withdraws the management company's authorisation;
- in all other circumstances set out in the management regulations.

## Chapter 2 – Authorised securitisation undertakings

### Section 1 – Obligation and conditions for an authorisation

**Art. 19.** Securitisation undertakings which issue securities to the public on a continuous basis ("authorised securitisation undertakings") must be authorised by the *Commission de Surveillance du Secteur Financier* (hereinafter the "CSSF") to exercise their activities.

**Art. 20.** (1) A securitisation undertaking shall be authorised only if the CSSF approves its articles of incorporation or the management regulations of the securitisation undertaking, and, as the case may be, authorises its management company. Securitisation companies and management companies of securitisation funds must have an adequate organisation and adequate resources to exercise their activities and to be supervised by the CSSF.

(2) 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.

(3) Any change in control of the securitisation company or the management company, any replacement of the management company, as well as any amendment to the management regulations or the articles of incorporation are subject to the prior approval of the CSSF.

**Art. 21.** (1) Authorised securitisation undertakings shall be entered on a list by the CSSF. Such entry shall be tantamount to authorisation and shall be notified to the securitisation undertaking. The said list and any amendments made thereto shall be published by the CSSF.

(2) The entering and the maintaining on the list referred to in the preceding paragraph, shall be subject to compliance with all the provisions of laws, regulations and agreements which govern the securitisation undertaking, the operation of its bodies and the distribution, placing or sale of the securities issued by the securitisation undertaking.

(3) The fact that a securitisation undertaking is entered on the list referred to in the preceding article shall not under any circumstance be described in any way whatsoever as a positive assessment made by the CSSF of the quality of the securities issued by it.

### Section 2 – Supervision of authorised undertakings

**Art. 22.** Authorised securitisation undertakings must entrust the custody of their liquid assets and securities with a credit institution established or having its registered office in Luxembourg.

**Art. 23.** (1) Authorised securitisation undertakings are supervised by the CSSF which must in particular ascertain that they comply with the law and their obligations.

(2) The CSSF carries on its mission until the close of the liquidation of the securitisation undertaking.

**Art. 24.** (1) The CSSF may request from authorised securitisation undertakings a periodical statement of their assets and liabilities and their operating results.

(2) It may require communication of any information or carry out on site investigations and inspect all the documents of a securitisation company, a management company or a credit institution entrusted with the deposit of the assets of an authorised securitisation undertaking, which relate to the organisation, administration, management, or operation of such undertaking or to the valuation of and return on the assets, in order to verify compliance with the provisions of this law and the provisions set out in the management regulations or the articles of incorporation of the securitisation undertaking, and in the agreements relating to the issuance of securities, and the accuracy of the information it has been provided with.

**Art. 25.** (1) If the CSSF finds that an authorised securitisation undertaking is not complying with the provisions of this law, the management regulations, the articles of incorporation or the agreements relating to the issuance of securities, or that the rights attached to the securities issued by the securitisation undertaking may be impaired, it may summon the securitisation undertaking to remedy the situation within a period it determines.

(2) If such summons is not complied with, the CSSF may:

- render its position regarding the findings made under paragraph 1 public;
- prohibit any issuance of securities;
- request the listing of the securities issued by the securitisation undertaking to be suspended;
- request the presiding judge of the chamber of the district court dealing with commercial matters to appoint a provisional administrator for the securitisation undertaking;
- withdraw its authorisation.

**Art. 26.** If an authorised securitisation undertaking or its management company does not publish the commencement of its liquidation in accordance with Article 13, such publication is made by the CSSF at the expense of the securitisation undertaking.

### *Section 3 – Decisions of the CSSF*

**Art. 27.** (1) Decisions of the CSSF adopted in implementation of this law shall state the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties are able to state their case. They shall be notified by registered mail or delivered by bailiff.

(2) Decisions rendered by the CSSF may be challenged in front of the administrative court. Any action must, under penalty of foreclosure, be filed within one month of notification of the challenged decision. It is exempt from any stamp or registration duties. The administrative court renders its decision on the merits of the case.

**Art. 28.** The decision of the CSSF withdrawing the name of a securitisation undertaking from the list provided for in Article 21 shall by operation of law, as from the notification thereof to such undertaking, and until the decision has become final, entail for such undertaking suspension of any payment by said undertaking and prohibition for such undertaking, under penalty of voidance, to take any measures other than protective measures, except with the authorisation of the supervisory commissioner.

**Art. 29.** (1) The CSSF shall, by operation of law, exercise the functions of supervisory commissioner, except if, at its request, the district court dealing with commercial matters appoints one or more other persons as supervisory commissioners.

(2) The application, stating the reasons on which it is based and accompanied by supporting documents, shall be lodged for that purpose at the registry of the district court in the district within which the undertaking has its registered office. The court shall give its ruling within a short period. If it considers that it has sufficient information, it shall immediately make an order in public session, without hearing the parties. If it deems necessary, it shall convene the parties by notification from the registrar within three days from the lodgement of the application. It shall hear the parties in chambers and give its decision in public session.

(3) The court shall decide as to the expenses and fees of the supervisory commissioners; it may grant them advances.

**Art. 30.** (1) The written authorisation of the supervisory commissioners is required for all measures and decisions of the undertaking and, failing such authorisation, they shall be void. The court may, however, limit the scope of operations subject to authorisation.

(2) The commissioners may submit for consideration to the relevant bodies of the undertaking any proposals which they consider appropriate. They may attend the proceedings of the administrative, management, executive or supervisory bodies of the undertaking.

**Art. 31.** (1) The judgment provided for in paragraph (1) of Article 39 of this law shall terminate the functions of the supervisory commissioner who must, within one month after his replacement, submit to the liquidators appointed in such judgment a report on the use of the undertaking's assets together with the accounts and supporting documents.

(2) If the withdrawal decision is amended on appeal by the court, the supervisory commissioner shall be deemed to have resigned.

### **Chapter 3 – Liquidation of securitisation undertakings**

#### *Section 1 – Provisions common to authorised and unauthorised securitisation undertakings*

**Art. 32.** Securitisation undertakings shall, after dissolution, be deemed to exist for the purpose of their liquidation. All documents issued by a securitisation undertaking in liquidation shall indicate that it is in liquidation.

**Art. 33.** Each compartment of a securitisation undertaking may be separately liquidated without such liquidation resulting in the liquidation of another compartment.

**Art. 34.** The liquidator may bring and defend all actions on behalf of the securitisation undertaking, receive all payments, grant releases with or without discharge, realise all the assets of the undertaking and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise all claims.

**Art. 35.** Sums and assets payable to investors who failed to present themselves at the time of the closure of the liquidation, shall be paid to the public trust office (*Caisse de Consignation*) to be held for the benefit of the persons entitled thereto.

**Art. 36.** (1) The liquidators shall be responsible both to third parties and to the securitisation undertaking itself for the discharge of their mandate and for any faults committed in the conduct of their activities.

(2) Legal actions against the liquidators shall lapse five years after the date on which facts upon which such actions are based occurred or, if fraudulently concealed, after the discovery of such facts.

#### *Section 2 – Provisions specific to authorised securitisation undertakings*

##### *Sub-section 1 – Voluntary liquidation of authorised undertakings*

**Art. 37.** The liquidator of an authorised securitisation undertaking must have the necessary good repute and professional qualifications and must be authorised by the CSSF.

**Art. 38.** During the liquidation procedure, authorised securitisation undertakings remain subject to the supervision of the CSSF.

##### *Sub-section 2 – Forced liquidation of authorised undertakings*

**Art. 39.** (1) The district court dealing with commercial matters shall upon request from the public prosecutor, acting *ex officio* or at the request of the CSSF, pronounce the dissolution and order the liquidation of authorised securitisation undertakings whose entry on the list provided for in Article 21 has been definitely refused or withdrawn.

(2) When ordering the liquidation, the court shall appoint a bankruptcy judge (*juge-commissaire*) and one or more liquidators, subject to Article 75 below.

(3) The court shall determine the method of liquidation. It may, at its discretion, render applicable the provisions applicable to the liquidation in bankruptcy. The liquidation method may be changed by a subsequent decision, either *ex officio* or at the request of the liquidator(s).

(4) The judgment pronouncing the dissolution and ordering the liquidation is provisionally enforceable.

(5) The judgments pronouncing the dissolution and ordering the liquidation of a securitisation undertaking shall be published in the *Mémorial* and in two newspapers of adequate distribution as specified by the court, of which at least one must be a Luxembourg newspaper. Such publications are made by the liquidator.

**Art. 40.** As from the date of the judgment, all legal actions related to movable or immovable property and all enforcement procedures over movable or immovable property can only be pursued, commenced or exercised against the liquidator.

The judgment ordering the liquidation suspends all seizures effected by unsecured creditors and creditors not benefiting from preferential rights over movable or immovable property.

**Art. 41** The liquidator may not grant security interests over the assets of the securitisation undertaking or transfer such assets for security purposes without the authorisation of the court. The court may grant such authorisation to the liquidator at any time during the liquidation proceedings in respect of all or part of the assets of the securitisation undertaking.

**Art. 42.** After payment or deposit with the public trust office (*Caisse de Consignation*) of sums sufficient to pay the debts, the liquidator shall distribute to the investors the sums or assets to which they are entitled.

**Art. 43.** The court may at any time request the liquidator to deliver a report on the status of the liquidation. It shall determine the costs and the fees of the liquidators and may grant them advances.

**Art. 44.** In case of absence of or insufficiency of assets, as determined by the bankruptcy judge, all procedural documents shall be exempt from court and registration duties and the costs and fees of the liquidators shall be borne by the Treasury and liquidated as judicial costs.

**Art. 45.** (1) When the liquidation is completed, the liquidator shall deliver a report to the court on the use made of the assets of the undertaking and shall submit accounts and evidence in support.

(2) The court shall appoint one or more independent auditors to examine the documents. After receipt of the report from the independent auditor, it renders its judgment on the management by the liquidator and on the close of the liquidation.

(3) Its decision shall be published in accordance with Article 39 here above and shall also indicate:

- the place designated by the court where the corporate books and records must be kept for at least five years;
- the measures taken in accordance with Article 35 with respect to the deposit with the public trust office (*Caisse de Consignation*) of sums and assets to which creditors and investors are entitled and which could not be paid out.

**Art. 46.** Any legal actions against the liquidators, in their capacity as such, lapses five years after the publication of the close of the liquidation proceedings.

#### **Chapter 4 – Accounting, audit, and the tax regime applicable to securitisation undertakings**

**Art. 47.** Securitisation companies must comply with the provisions of Section XIII of the amended law of 10 August 1915 on commercial companies and, as from 1<sup>st</sup> January 2005, with the provisions of Chapters II and IV of Title II of the law of 19 December 2002 on the trade and companies register and the accounting and the annual accounts of companies. Their management reports must contain all material information relating to their financial situation which could affect the rights of investors.

**Art. 48.** (1) The accounts of a securitisation undertaking are audited by one or more independent auditors appointed, as the case may be, by the management body of the securitisation company or by the management company of the securitisation fund.

(2) The independent auditors of an authorised securitisation undertaking must be authorised by the CSSF.

(3) The independent auditors entrusted with the auditing of the accounts of a securitisation undertaking shall inform the management of the securitisation company or of the management company and, as regards authorised securitisation undertakings, also the CSSF and, as the case may be, the representative of the investors, of any irregularities and inaccuracies which they detect during the accomplishment of their duties.

**Art. 49.** The provisions of the amended law of 10 August 1915 on commercial companies relating to statutory auditors (*commissaires*) shall not apply to Luxembourg securitisation entities.

**Art. 50.** Securitisation funds are subject to the accounting and tax provisions applicable to undertakings for collective investment provided for by the laws of 30 March 1988 and of 20 December 2002 on undertakings for collective investment, except for the annual subscription tax which is not due.

**Art. 51.** (1) By derogation from the law of 29 December 1971 on tax levied on capital contributions to non-commercial partnerships and commercial companies and amending certain statutory provisions governing the collection of registration duties, the capital contribution duty which becomes due upon the incorporation of an undertaking governed by this law or subsequently, in particular for new capital contributions, or upon transformation of an undertaking governed by this law into another undertaking governed by this law, or upon a merger of undertakings governed by this law, is levied as a fixed amount to be determined for each type of taxable operation by a grand ducal regulation but which may not exceed one thousand two hundred and fifty euros.

(2) The capital contribution duty on contributions made to securitisation companies, subsequent to their incorporation, is only due if the amount of the new share capital exceeds the amount on which the duty was levied previously.

**Art. 52.** (1) Agreements entered into in the context of a securitisation transaction and all other instruments relating to such transaction are not subject to registration formalities, even when referred to in a public deed or produced in court or before any other public authority, provided that they do not have the effect to transfer rights which must be transcribed, recorded or registered and which relate to immovable property located in Luxembourg, or to aircraft, ships or riverboats recorded on a public register in Luxembourg. However, they may be submitted for registration, in which case they are registered at the fixed rate.

(2) By derogation from the provisions of the decree of 24 Prairial Year XI, where instruments entered into in the context of a securitisation transaction or other instruments relating to such transaction are submitted for registration, the obligation to attach to these instruments a translation certified by a notary or by another sworn translator where they are entered into in languages other than the official languages does not apply if these instruments are drawn up in English.

(3) Article 44 paragraph 1 sub d) of the law of 12 February 1979 on the value added tax is completed by the following wording: "as well as securitisation undertakings situated in Luxembourg".

## TITLE III

### Securitised risks

#### Chapter 1 – Assumption of risks

**Art. 53.** (1) Risks relating to the holding of assets, whether movable or immovable, tangible or intangible, as well as risks resulting from the obligations assumed by third parties or relating to all or part of the activities of third parties are capable of being securitised.

(2) The securitisation undertaking may assume those risks by acquiring the assets, guaranteeing the obligations or by committing itself in any other way.

(3) Securitisation transactions governed by this law do not constitute activities subject to the law of 6 December 1991 on the insurance sector.

**Art. 54.** Securitisation undertakings may acquire and, subject to the conditions set out in Article 61 hereafter, transfer claims and other assets, existing or future, in one or more transactions or on a continuous basis.

**Art. 55.** (1) The assignment of an existing claim to or by a securitisation undertaking becomes effective between the parties and against third parties as from the moment the assignment is agreed on, unless the contrary is provided for in such agreement.

(2) A future claim which arises out of an existing or future agreement is capable of being assigned to or by a securitisation undertaking provided that it can be identified as being part of the assignment at the time it comes into existence or at any other time agreed between the parties.

(3) The assignment of a future claim is conditional upon its coming into existence, but when the claim does come into existence, the assignment becomes effective between parties and against third parties as from the moment the assignment is agreed on, unless the contrary is provided for in such agreement, notwithstanding the opening of bankruptcy proceedings or any other collective proceedings against the assignor before the date on which the claim comes into existence.

**Art. 56.** (1) The claim assigned to a securitisation undertaking becomes part of its property as from the date on which the assignment becomes effective, notwithstanding any undertaking by the securitisation undertaking to reassign the claim at a later date. The assignment can not be recharacterised on grounds relating to the existence of such an undertaking.

(2) The assignment to or by a securitisation undertaking entails, except if otherwise agreed, the transfer of the guarantees and security interests securing such claim, and its enforceability by operation of law against third parties, without any further formalities.

(3) The assigned debtor is validly discharged from its payment obligations by payment to the assignor as long as it has not gained knowledge of the assignment.

(4) Article 1699 of the Civil Code does not apply to claims assigned to a securitisation undertaking.

**Art. 57.** An assignment prohibited by the agreement out of which the assigned claim arises or which for other reasons does not comply with the provisions of such agreement is not effective against the assigned debtor unless:

- the assigned debtor has agreed thereto;
- the assignee legitimately ignored such non-compliance;
- the assignment relates to a monetary claim.

**Art. 58.** The law governing the assigned claim determines the assignability of such claim, the relationship between the assignee and the debtor, the conditions under which the assignment is effective against the debtor and whether the debtor's obligations have been validly discharged.

The law of the State in which the assignor is located governs the conditions under which the assignment is effective against third parties.

**Art. 59.** The articles of incorporation, the management regulations of the securitisation undertaking, an assignment agreement or any other agreement may grant to the assignor a right over all or part of the assets of the securitisation undertaking which are available after payment of all other creditors.

## **Chapter 2 – Management of risks**

**Art. 60.** The securitisation undertaking may entrust the assignor or a third party with the collection of claims it holds as well as with any other tasks relating to the management thereof, without such persons having to apply for an authorisation under the legislation on the financial sector.

**Art. 61.** (1) A securitisation undertaking cannot assign its assets except in accordance with the provisions laid down in its articles of incorporation or its management regulations.

(2) In the event that the assignor or the third party to which the collection of claims has been entrusted becomes subject to insolvency proceedings, such as bankruptcy, controlled management,

judicial liquidation or any other proceedings affecting the rights of creditors generally, the securitisation undertaking is entitled to claim any sums collected on its behalf prior to the opening of such proceedings, without the other creditors having any rights to such amounts, and notwithstanding any claims raised by the bankruptcy receiver, the controlled management commissioner or the liquidator.

(3) It may not, by any means whatsoever, create security interests over its assets or transfer its assets for guarantee purposes, except to secure the obligations it has assumed for their securitisation or in favour of its investors, their fiduciary-representative or the issuing vehicle participating in the securitisation.

Security interests and guarantees created in breach of this Article are void by operation of law.

(4) Except if otherwise agreed, security interests and guarantees shall, by operation of law, extend to the proceeds of the assets assigned or over which security interests have been granted, to any funds received in payment and to the assets in which they are invested.

Without prejudice to the law of 1<sup>st</sup> August 2001 on the transfer of ownership for security purposes, Article 445 paragraph 4 of the Commercial Code does not apply to security interests granted no later than the time of issuance of the securities or the conclusion of the agreements secured by such security interests, notwithstanding such security interests being extended to new assets or claims in accordance with this Article and the agreement creating such security interests.

(5) The beneficiaries of pledges over claims gain possession of such claims by entering into the agreement creating such collateral rights. The debtors of the pledged claims are however validly discharged from their payment obligations by payment to the securitisation undertaking as long as they have not gained knowledge of the pledge.

## TITLE IV

### Investors and creditors

#### Chapter 1 – *Rights of investors and creditors*

**Art. 62.** (1) The rights of the investors and of the creditors are limited to the assets of the securitisation undertaking. Where such rights relate to a compartment or have arisen in connection with the creation, the operation or the liquidation of a compartment, they are limited to the assets of that compartment.

(2) The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment.

(3) As between investors, each compartment shall be treated as a separate entity, except if otherwise provided for in the constitutional documents.

**Art. 63.** (1) If provided for in the articles of incorporation, the management regulations or the issuance agreement, a securitisation undertaking may issue securities whose value or yield is linked to specific compartments, assets or risks, or whose repayment is subject to the repayment of other instruments, certain claims or certain categories of shares. If the acquisition vehicle is different from the issuing vehicle, the value, the yield and the conditions of repayment may also be linked to the assets and the liabilities of the acquisition vehicle.

(2) Notwithstanding any provision to the contrary, the voting rights attached to shares which do not have an equal value is proportionate to the portion of the share capital represented by such shares. The voting rights attached to notes and other debt instruments are always proportionate to the portion of the debt they represent.

**Art. 64.** (1) The articles of incorporation, the management regulations of a securitisation undertaking and any agreement entered into by the securitisation undertaking may contain provisions by which investors and creditors accept to subordinate the maturity or the enforcement of their rights to the payment of other investors or creditors or undertake not to seize the assets of the securitisation undertaking nor, as the case may be, of the issuing or acquisition vehicle, and not to petition for

bankruptcy thereof or request the opening of any other collective or reorganisation proceedings against them.

(2) Proceedings initiated in breach of such provisions shall be declared inadmissible.

**Art. 65.** (1) The conditions of issuance and of reimbursement of securities issued by a securitisation undertaking are binding upon the latter and upon the investors and are effective against any other person, including in case of liquidation of one or more compartments, bankruptcy and generally any proceedings affecting creditors' rights generally, without prejudice however to the rights of creditors which have not given their consent thereto.

(2) The same applies to any specific conditions accepted by creditors for payment of their claims.

**Art. 66.** (1) Without prejudice to Article 70 below, Articles 86 through 97 of the amended law of 10 August 1915 on commercial companies apply to holders of any debt instruments issued by a securitisation undertaking. The issuance agreements of such instruments may however deviate from these provisions.

(2) In case of the issuance of debt instruments by a securitisation fund, the management company of the fund exercises the rights and assumes the obligations of the issuing company or its board of directors under Articles 86 through 95 of the law referred to above.

## Chapter 2 – Fiduciary-representatives

### *Section 1 – Rights and powers of fiduciary-representatives*

**Art. 67.** The investors and the creditors of a securitisation undertaking may entrust the management of their interests to one or more fiduciary-representatives. This law applies only to fiduciary-representatives having their registered office in Luxembourg.

**Art. 68.** (1) The instrument by which a fiduciary-representative accepts its mission must define its rights and its powers, in particular its powers of representation, specify the groups of investors or creditors on behalf of which it acts and provide for a procedure for its replacement.

(2) That instrument is binding, without any other formality being required, on all investors and creditors which have accepted the fiduciary-representative. The subscription or the acquisition of a security issued by a securitisation undertaking designating a fiduciary-representative constitutes acceptance of the fiduciary-representative and of its mission.

**Art. 69.** (1) Unless otherwise provided for, investors and creditors which have appointed a fiduciary-representative are represented by it in all their relations with the securitisation undertaking and third parties connected to the securitisation. As long as they are represented, they can not individually exercise the rights the management of which they have entrusted to the fiduciary-representative.

(2) Within the limits of the powers the investors and the creditors have entrusted to it, the fiduciary-representative may initiate on their behalf all proceedings and defend their interests, including in judicial proceedings, without having to disclose their identity, the sole indication that it acts in its capacity as fiduciary-representative being sufficient.

**Art. 70.** (1) Where a securitisation undertaking issues debt instruments, it may entrust a fiduciary-representative with the functions of representative of the holders of such instruments and freely define its powers, notwithstanding Article 88 of the amended law of 10 August 1915 on commercial companies.

(2) Articles 86 through 97 of the amended law of 10 August 1915 on commercial companies do apply to the issue only if the issuing agreement or the instrument of appointment of the fiduciary-representative do not deviate therefrom.

**Art. 71.** (1) The fiduciary-representative may also be granted by the investors and the creditors the power to act in their interest in a fiduciary capacity, in accordance with the legislation on the trust and on fiduciary contracts. The assets and rights which it acquires for the benefit of investors and creditors form a fiduciary property separate from its own assets and liabilities as well as from any other fiduciary property it may hold.

(2) – The fiduciary-representative may in particular in such capacity accept, take, hold and exercise all security interests and guarantees and receive all payments to be made to the investors and the creditors which have granted such powers to it, as if it were itself the holder of the investors' and creditors' claims, any payments made to it constituting a valid discharge for the debtor. Articles 445, 446, 447 Paragraph 2 and 448 of the Commercial Code do not apply to such security interests, guarantees or payments.

**Art. 72.** The securitisation undertaking may assign to the fiduciary-representative, on the terms agreed between them, all or part of its rights and actions arising from a contract entered into with a third party. The assignment is effective against the other party to such contract and against all other third parties, as from the moment in time it has been entered into and it cannot be challenged on the basis of Articles 445, 446, 447 Paragraph 2 and 448 of the Commercial Code.

The other party to such contract is however validly discharged by payments made to the assigning undertaking for as long as it did not have knowledge of the assignment.

**Art. 73.** Any fiduciary-representative which substitutes for itself a third party for the exercise of the rights and actions which have been assigned to it, is not liable for any damages caused by such third party, unless it had not been granted the power of substitution or it has chosen a person notoriously incompetent or insolvent.

The assigning undertaking and, notwithstanding their representation by the fiduciary-representative, investors and creditors may act directly against the substituted third party.

**Art. 74.** The articles of incorporation or the internal rules of a securitisation undertaking may authorise a fiduciary-representative to request in Court, on serious grounds, the replacement, on a provisional or permanent basis, of the management bodies of such undertaking, the management bodies of the management company, where applicable, or of the management company itself.

**Art. 75.** – In case of voluntary or compulsory liquidation of a securitisation undertaking or of one of its compartments, and except if otherwise provided for in the instrument of appointment, the fiduciary-representative shall act as liquidator on behalf of the investors and the creditors by whom it has been appointed.

**Art. 76.** Unless otherwise provided for in the instrument of appointment, the liability of the fiduciary-representative *vis-à-vis* the investors and creditors on whose behalf it acts shall be assessed as if it were a remunerated agent.

**Art. 77.** (1) In case of replacement of a fiduciary-representative all rights and actions held by it in the interest of investors and creditors are transferred, by operation of law and without any other formalities, to the new fiduciary-representative.

(2) The resignation of a fiduciary-representative becomes effective only as of the appointment of a new fiduciary-representative.

**Art. 78.** (1) Upon a reasoned request from a represented investor or creditor, establishing the existence of serious grounds, the CSSF may provisionally or permanently replace a fiduciary-representative.

(2) Unless otherwise provided for in the instrument of appointment, any other means of revocation or replacement are excluded.

#### *Section 2 – Mandatory authorisation of fiduciary-representatives*

**Art. 79.** (1) The fiduciary-representatives subject to this law must be authorised by the Minister with responsibility for the CSSF.

(2) They may not exercise any activities other than their principal activity except on an accessory and ancillary basis.

**Art. 80.** (1) The authorisation for the exercise of the activity of a fiduciary-representative can only be granted to stock companies having a share capital and own funds at least equal to four hundred thousand euros.

(2) The authorisation is subject to the CSSF being informed of the identity of the direct or indirect shareholders, whether they are natural persons or legal entities, which hold in the fiduciary-representative to be authorised a qualifying participation within the meaning of Article 18 of the law of 5 April 1993 on the financial sector and of the amount of such participations.

(3) In order to obtain the authorisation, the members of the administrative, management and supervisory bodies as well as the shareholders referred to in the preceding paragraph, must demonstrate their professional repute. Such repute shall be assessed on the basis of their judicial records and all elements which can demonstrate that the persons concerned are of good character and present all guarantee showing activity beyond reproach.

(4) The persons in charge of the management must possess adequate professional experience.

**Art. 81.** The application for authorisation must be addressed in writing to the minister with responsibility for the CSSF and must contain all other information necessary for its assessment, and in particular precise information on the administrative and accounting structure of the applicant.

**Art. 82.** (1) The authorisation is granted after review of the compliance with the requirements of this law by the CSSF.

(2) The decision taken on the application for authorisation shall be reasoned and shall be notified to the applicant within six months of the receipt of the application or, if the application is incomplete, within six months of the receipt of all the information necessary for the decision to be taken. In any event, a decision shall be taken within twelve months of the receipt of the application, failing which the absence of a decision will be deemed equivalent to a refusal. The decision may be challenged, within a period of one month, under penalty of foreclosure, in the administrative court, which decides on the merits of the case.

(3) The authorisation is granted for an unlimited period of time.

**Art. 83.** (1) Any changes in the identity of the persons who have to meet the legal requirements of professional repute and experience must be authorised in advance by the CSSF. For this purpose, the CSSF may request all necessary information on the persons who have to meet the legal requirements. The decision of the CSSF can be challenged, within a period of one month, under the penalty of foreclosure, in the administrative court, which decides on the merits of the case.

(2) A new authorisation is required prior to any change of the object, name or legal form.

**Art. 84.** (1) The authorisation lapses if it is not used for an uninterrupted period exceeding twelve months.

(2) The authorisation is withdrawn if the conditions on which it was granted are no longer met.

(3) The authorisation is withdrawn if it was obtained by means of false declarations or by any other irregular means.

(4) The decision to withdraw the authorisation may be challenged, within a period of one month, under penalty of foreclosure, in the administrative court which decides on the merits of the case.

## TITLE V

### Sanctions

**Art. 85.** The CSSF may impose upon the directors, managers and officers of authorised securitisation undertakings or of a fiduciary-representative, and the liquidators in case of a voluntary liquidation of an authorised securitisation undertaking, a fine of 125 to 12,500 euros in the event they refuse to provide the financial reports and the requested information or where such documents prove to be incomplete, inaccurate or false, as well as in case the existence of any other serious irregularity is established.

## TITLE VI

### Amending and transitory provisions

#### Chapter 1 – Amending provisions

**Art. 86.** Article 13 (2) of the amended law of 5 April 1993 on the financial sector is completed by the following indent which is inserted as penultimate indent:

" – to securitisation undertakings and to fiduciary-representatives acting in connection with such an undertaking"

**Art. 87.** The first indent of paragraph (1) of Article 2 of the law of 23 December 1998 creating a *Commission de Surveillance du Secteur Financier* is replaced by the following:

"The Commission is the competent authority for the prudential supervision of credit institutions, professionals of the financial sector within the meaning of the amended law of 5 April 1993 on the financial sector, undertakings for collective investments, pension funds in the form of a *sepcav* or *assep*, authorised securitisation undertakings, fiduciary-representatives acting in connection with a securitisation transaction as well as persons running an exchange."

**Art. 88.** Article 4 of the law of 27 July 2003 on the trust and on fiduciary contracts is amended as follows: "This title only applies to fiduciary contracts where the fiduciary is a credit institution, an investment firm, an investment company with variable or fixed share capital, a securitisation company, a fiduciary representative acting in the context of a securitisation transaction, a management company of an investment fund or a securitisation fund, a pension fund, an insurance or a reinsurance undertaking or a national or international public body operating in the financial sector."

**Art. 89.** The law of 4 December 1967 on income tax is amended as follows:

a) Article 22 *bis* is completed by the addition of a paragraph 5 which reads as follows: "(5) securities issued by a securitisation undertaking do not benefit from the provisions of paragraph 2 of this Article."

b) Article 25 is completed by the addition of a paragraph 3 which reads as follows: "(3) The acquisition price of an asset acquired by a securitisation undertaking must correspond to the estimated realisation value of such asset."

c) Article 46 is completed by a number 14 which reads as follows: "14. the obligations assumed towards the investors and towards any other creditors by a securitisation company."

d) Article 97 is completed by the addition of a paragraph 6 which reads as follows: "(6) The distributions and other proceeds allotted to the investors and other creditors of a securitisation undertaking constitute income resulting from transferable capital within the meaning of indent 1 number 5 of this Article."

e) Article 164 *bis* is completed by the insertion after paragraph 4 of a new paragraph 5 which reads as follows: "(5) Securitisation undertakings are excluded from the scope of this Article." The other paragraphs are renumbered accordingly.

**Art. 90.** The first indent of paragraph 3 of the law of 16 October 1934 on wealth tax is completed by the reinsertion of a number 4 which shall read as follows: "4. securitisation companies."

#### Chapter 2 – Transitory provision

**Art. 91.** This law does not apply to securitisation transactions or undertakings set up prior to its entry into force, unless the parties involved explicitly decide otherwise by modifying the constitutional documents of the relevant securitisation undertaking by inserting an explicit provision to that effect.

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Parliamentary documents 5199;  
ordinary session 2002-2003 and  
2003-2004

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