

Asset-Backed Securities (ABS)

Specifications to apply for Eurosystem eligibility

Eligible asset-backed securities (ABS) may be used by counterparties as collateral in Eurosystem credit operations. In line with the decentralized implementation of Eurosystem monetary policy, the eligibility of ABS is assessed, and reported to the [list of eligible marketable assets](#) of the European Central Bank (ECB), by the relevant Eurosystem national central bank. The Banque Centrale du Luxembourg (the 'Central Bank') is responsible for assessing and reporting the eligibility of ABS admitted to trading on the Luxembourg Stock Exchange.

1. Introduction

Further relevant information is detailed below, including in respect of the relevant legal framework and the assessment and application processes for ABS.

Queries regarding an ABS application, or the assessment process, may be directed to ca@bcl.lu.

2. Relevant Legal Framework

ABS must fulfil certain eligibility criteria and comply with certain loan-level data reporting requirements before they may be accepted for use as collateral in Eurosystem credit operations. These criteria and requirements are laid down in the following legal act, which is published on EUR-Lex (and accessible via the hyperlink below):

Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) ([ECB/2014/60](#)) (recast), as amended (the 'ECB General Documentation Guideline'); and

hereafter the 'Relevant Legal Framework', as the same may be amended and/or supplemented from time to time.

3. Eurosystem right to request clarifications and confirmations

Pursuant to Article 79 of the ECB General Documentation Guideline, the Eurosystem reserves the right to request from any third party any necessary clarifications and/or legal confirmations for the purpose of assessing the eligibility of the relevant ABS. If a third party fails to comply with a particular request, the Eurosystem may decide not to accept the relevant ABS for use as collateral or may decide to suspend the eligibility of such collateral.

4. Clear, consistent and comprehensive information

Pursuant to Article 79a of the ECB General Documentation Guideline, if the information submitted for assessment is not sufficiently clear, consistent and comprehensive to demonstrate fulfilment of each of the eligibility criteria applicable to ABS, the Eurosystem may decide not to accept the relevant ABS for use as collateral.

5. Scope of assessment – Eurosystem's 'look-through' approach to prior transfers

With regard to the scope and application of the eligibility criteria laid down in Articles 74(2), (3), and (4), 75(1) and (2) and 76(1) and (2) of the ECB General Documentation Guideline, the Eurosystem applies a 'look-through' approach to each prior transfer of the cash-flow generating assets backing the ABS (*i.e.*, transfers occurring prior to the securitisation relating to the ABS issuance under assessment), thereby subjecting such prior transfers to those eligibility criteria.

Therefore, all prior transfers of the cash-flow generating assets backing the ABS, including, for example, but not limited to, direct or indirect prior warehousings, direct or indirect prior acquisitions from original lenders/originators, intermediaries, sellers, vendors, assignors, transferors, etc., should be clearly, consistently and comprehensively disclosed in the documentation submitted for assessment.

The Eurosystem requires for its eligibility assessment an external legal opinion(s) signed by a licenced practising lawyer qualified to practice in the relevant legal jurisdiction opining on each transfer, including each prior transfer, of (any legal or beneficial right, title, interest or benefit in, to or under or related to) the cash-flow generating assets backing the ABS.

Furthermore, the relevant legal opinion(s) should opine on:

1. All relevant legal aspects, including, for example, but not limited to:
 - Incorporation and corporate authority, capacity and powers of each of the relevant parties
 - Execution and delivery of the transaction documentation duly performed by each of the relevant parties
 - Validity and enforceability of the obligations of each of the relevant parties under the transaction documentation
 - Choice of law(s) governing the transaction documentation
 - True sale of the cash-flow generating assets under the law of a EU Member State
 - Insolvency in respect of each of the relevant parties
 - Clawbacks of the cash-flow generating assets from the relevant transferee(s) into, for example, the estate of the relevant transferor(s)
 - Limited recourse, non-petition and priority of payments/subordination provisions
 - Immunity from suit, execution, attachment or other legal processes
 - All relevant authorisations, approvals, permissions, consents, notifications, transfer instruments, filings, registrations, notarisations, exemptions, licences, *etc.* required pursuant to the terms of the cash-flow generating assets, the terms of the ABS transaction documentation and the laws governing the cash-flow generating assets and the transaction documentation;
2. The laws of each relevant jurisdiction. In this regard, for example, where the originator is a branch, the jurisdiction of incorporation of the registered office of the originator is also of relevance. Furthermore, numerous legal opinions may be required depending on the number of relevant jurisdictions. For example, in a scenario where the originator is incorporated and registered in one jurisdiction, the issuer is incorporated and registered in another jurisdiction and the transfer documentation is governed by the laws of a third jurisdiction, a legal opinion is required in respect of each of the three legal jurisdictions;
3. Each relevant party, for example, but not limited to, each transferor and each transferee of (any legal or beneficial right, title, interest or benefit in, to or under or related to) the cash-flow generating assets backing the ABS. For the purpose of this exercise, it is irrelevant how the 'relevant party' is labelled/termed and, therefore, it includes, for example, but not limited to, each original lender/originator, seller, vendor, assignor, transferor, warehouse entity, intermediary, purchaser, assignee, transferee, issuer, *etc.*;
4. Each relevant document, for example, but not limited to, constitutive documents, articles of association, board minutes, board resolutions, power(s) of attorney, corporate certificates, solvency certificates, *etc.* of each of the relevant parties, all transfer documentation, including all prior transfer documentation, *etc.*

6. Prior transfers – transfer documentation

In addition, each relevant document and the result of each relevant search against each relevant party (*i.e.*, searches in or relating to, for example, but not limited to,

the relevant companies, bankruptcy/insolvency and judicial registers, security interests, authorizations, bankruptcy/insolvency (and related petitions, appointments, *etc.*), reorganization measures, relevant decisions, judgements, orders, decrees of judicial and/or competent authorities, *etc.*) should be examined for the purpose of issuing such legal opinion(s).

In order to enable the Central Bank to commence an eligibility assessment of an ABS, an applicant must submit as part of its application the following to ca@bcl.lu (each of which is further detailed below):

7. Application to the Central Bank for ABS eligibility assessment

1. A completed ABS eligibility assessment application form;
2. All relevant ABS documentation; and

For each application, applicants should consult the Relevant Legal Framework.

An assessment shall not be commenced, nor should it be considered as having been commenced, until such time as (i) the Central Bank is in receipt of each of the foregoing and (ii) compliance with the loan-level data reporting requirements (in accordance with Article 78 of the ECB General Documentation Guideline) is evidenced.

7.1. ABS eligibility assessment application form

The Central Bank requires a properly and fully completed ABS eligibility assessment application form (the '**ABS Eligibility Assessment Application Form**'), which must be dated.

Only the most up-to-date version of the ABS Eligibility Assessment Application Form will be accepted.

The required references to relevant ABS documentation (e.g., the prospectus, legal opinion, *etc.*) in order to support an answer in the ABS Eligibility Assessment Application Form must cite the specific page number(s) and the relevant paragraph(s), e.g., 'please see prospectus' is not sufficient.

7.2. ABS documentation

The Central Bank requires the following documentation to be submitted as part of each application:

- Final prospectus, information memorandum, offering circular, listing particulars and, if applicable, any supplement(s) or final terms;
- Confirmation of official listing and admission to trading on the Luxembourg Stock Exchange;
- New issue reports from the two external credit assessment institutions (ECAIs) which have assigned the first-best and the second-best ECAI issue rating to the ABS (*i.e.*, the submission of links to the new issue reports on the ECAIs' websites is not sufficient);
- External legal opinion(s) signed by a licensed practicing lawyer qualified to practice in the relevant legal jurisdiction opining on all relevant legal aspects of each transfer, including each prior transfer, of (any legal or beneficial right, title, interest or benefit in, to or under or related to) the cash-flow generating assets backing the ABS (as further described above);
- Transfer documentation relating to each transfer, including each prior transfer, of (any legal or beneficial right, title, interest or benefit in, to or under or related to) the cash-flow generating assets backing the ABS, *i.e.*, a complete chain of title (in this regard, each of the legal instruments effecting each 'acquisition' (e.g., sale/purchase/assignment agreement, *etc.*) and each 'transfer' (e.g., transfer certificate, deed of

transfer/conveyance/assignment, *etc.*) of the cash-flow generating assets backing the ABS;

If applicable:

- For transactions already issued, a copy of the most up-to-date ECAI surveillance report from each of the two ECAIs which have assigned the first-best and the second-best ECAI issue rating to the ABS;
- For transactions already issued, a copy of the latest investor report;
- Warranty and indemnity documentation;
- Servicing or administration documentation;
- Security documentation (*i.e.*, each of the legal instrument(s) (*e.g.*, deed of charge/pledge/trust, *etc.*) granting security interests in all of the issuer's (and, if applicable, any intermediary's) assets (including, but not limited to, the cash-flow generating assets) in favour of the relevant fiduciary (*e.g.*, security trustee) for the benefit of, among others, the noteholders;
- Liquidity support documentation/account documentation;
- Defined terms documentation (*i.e.*, the document setting out the defined terms used in the particular ABS transaction documentation, *e.g.*, master definition's agreement, incorporated terms memorandum, *etc.*);
- In respect of Italian securitisations effected pursuant to Italian Law No. 130 of 30 April 1999 (the 'Italian Securitisation Law'), documentary evidence of (i) the notice(s) of assignment published in the Official Gazette of the Republic of Italy (*Gazzetta Ufficiale*) and (ii) the registration(s) of the notice(s) of assignment in the relevant Companies' Register/Register of Enterprises; and
- In respect of Dutch law governed securitisations effected pursuant to an 'undisclosed/silent assignment' (*stille cessione*), a copy of the relevant deed(s) of assignment (and pledge) and/or, if applicable, any other equivalent legal instrument(s), evidencing that it has been either (i) registered with the relevant tax authorities (*Belastingdienst Ondernemingen*) or (ii) executed before a civil law notary.

All documentation submitted for assessment must be the final version and in PDF (*i.e.*, no draft documents).

8. Aiding a smooth assessment process

In order to aid a smooth assessment process and to avoid unnecessary delays, the documentation submitted for assessment, which includes the ABS Application Form and the Confirmation and clarification letter (if applicable), should clearly, consistently and comprehensively demonstrate fulfilment of each of the applicable eligibility criteria set out in the Relevant Legal Framework, including in respect of any prior transfers of the cash-flow generating assets backing the ABS.

9. Modifications to ABS – notification and submission of documentation

Any modifications to ABS, including, for example, but not limited to, their terms and conditions, the transaction documentation, the transaction parties, *etc.*, whether during or after their eligibility assessment by the Central Bank, may be notified to the Central Bank (ca@bcl.lu), along with the submission of any related amending documentation.

The following should be provided only upon request by the Central Bank¹:

10. Confirmation and clarification letter signed by an authorised representative of the applicant

Pursuant to Article 79 of the ECB General Documentation Guideline, the Central Bank requires certain confirmations and clarifications from the applicant on its letterhead and signed by a duly authorized representative of the applicant (the 'Confirmation and clarification letter'¹). In particular, the Central Bank requires the Confirmation and clarification letter, which may be submitted in PDF, to contain each of the following:

1. A detailed clarification in respect of each of the transfers, including each prior transfer, of (any legal or beneficial right, title, interest or benefit in, to or under or related to) the cash-flow generating assets backing the ABS;
 - This clarification must specify in chronological order each of the transfers, including each prior transfer, of (any legal or beneficial right, title, interest or benefit in, to or under or related to) the cash-flow generating assets;
 - In addition, this clarification must specify the legal instruments effecting each of the transfers, including each prior transfer, of (any legal or beneficial right, title, interest or benefit in, to or under or related to) the cash-flow generating assets, each of the parties, and their respective capacities and jurisdictions of incorporation, to each of these legal instruments and the dates of each of these legal instruments;
2. Where the issuance is not recent, a clarification in respect of all modifications made to the ABS (transaction) since their issuance, including in respect of, for example, but not limited to, their terms and conditions, the transaction documentation, the transaction parties, *etc.*;
3. A confirmation that the documentation submitted for assessment in respect of the ABS issued by [insert the name of the issuer of the ABS] clearly, consistently and comprehensively demonstrates fulfilment of each of the applicable eligibility criteria set out in the Relevant Legal Framework;
4. A confirmation that all prior transfers of the cash-flow generating assets backing the ABS issued by [insert the name of the issuer of the ABS] are clearly, consistently and comprehensively disclosed in the documentation submitted for assessment;
5. A confirmation that all transfer documentation, including all prior transfer documentation, in respect of the cash-flow generating assets backing the ABS issued by [insert the name of the issuer of the ABS] has been submitted for assessment;
6. A confirmation that all legal opinions opining on each transfer, including each prior transfer, of the cash-flow generating assets backing the ABS issued by [insert the name of the issuer of the ABS] have been submitted for assessment; and
7. A confirmation that the information provided by the applicant in (a) the ABS Application Form and (b) the Confirmation and clarification letter is true and correct.

¹ Required if the transaction features any of the following characteristics (this list is not exhaustive): a) multiple prior transfers of the cash-flow generating assets, b) a complex warehousing structure, c) multiple SPVs, d) the Prospectus does not disclose in a clear and comprehensive manner each of the prior transfers of the cash-flow generating assets backing the ABS, e) the originator and the seller are different entities, f) lack of full and clear disclosure in the documentation submitted (omissions, discrepancies in disclosures...), g) qualified representations and warranties (e.g. to the best of the SPV's/Seller's knowledge), h) legal and beneficial interest held by different group entities or other entities prior to and after the securitisation, etc.