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Luxembourg
Lending & Secured Finance

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This country-specific Q&A provides an overview of lending & secured finance laws and regulations applicable in Luxembourg.

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Luxembourg: Lending & Secured Finance

1. Do foreign lenders (including non-bank foreign lenders) require a licence/regulatory approval to lend into your jurisdiction or take the benefit of security over assets located in your jurisdiction?

Lending activities

Subject to the provisions of the Luxembourg financial sector act dated 5 April 1993, as amended, EU-based financial institutions performing lending activities in Luxembourg shall not require a license, based on the EU rules of freedom to provide services, freedom of capital and freedom of movement, which will prevail over any country-specific license requirements in this respect, provided that such activities are covered by the authorizations that the relevant lenders received in their home countries.

Non-EU based financial institutions offering their services in Luxembourg shall be subject to the same authorization rules as those applying to professionals governed by Luxembourg law and shall, therefore, be required to obtain a license from the Luxembourg Ministry of Finance if they engage in regulated financial sector activities such as, in particular, the business of granting loans to the public for their own account. However, based on the current official position of the Luxembourg financial sector authority (*Commission de Surveillance du Secteur Financier; CSSF*), such license requirement shall only be triggered if certain cumulative conditions are met (notably if agents of the relevant lender are sent to Luxembourg to provide regulated services). Where a lender only provides general information on its activities to potential Luxembourg borrowers (e.g. by email or telephone) or where a Luxembourg borrower approaches the lender in the lenders' home country to enter into a loan, no license shall be required. Preparatory works, roadshows or preliminary meetings in Luxembourg leading to the entry into a loan agreement are also excluded from the scope of such license requirement. However, each such situation shall be assessed on a case-by-case basis.

The CSSF has clarified that it considers that a lending activity is not directed towards the public (and thus does not trigger a licence requirement) where loans are granted to a limited circle of previously determined persons or the nominal value of a loan amounts to EUR 3,000,000 at least and the loans are granted exclusively to professionals.

The current legislative framework in Luxembourg for non-EU based financial institutions lending into Luxembourg will be modified soon.

The Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks (called "CRD VI") aims at introducing a new regime.

An undertaking established in a non-EU country that carries out certain activities, such as lending, taking deposit and other repayable funds, guarantees and commitment (Art 47 CRD VI ; Annex I Directive 2013/36/EU) in an EU member state will be required to establish or move business to branches or subsidiaries in the EU/EEA member states and seek authorisation under the CRD IV Directive

At present no pending bill has been submitted in Luxembourg for the implementation of CRD VI.

Whilst the CRD VI must only be transposed into national law by 10 January 2026, third country undertakings should already assess their current structure and the related risks to decide whether they fall within the remit of the proposed new regime and its various requirements, such as the establishment of a branch or subsidiary.

Taking security

There is no requirement for a foreign entity to obtain a license/regulatory approval to take the benefit of security over assets located in Luxembourg, except for specific security interests such as pledges over a going concern/business universality (*gages sur fonds de commerce*) which can only be granted to specifically authorised credit institutions, notaries or breweries.

As set out above under item 1. in relation to CRD VI, third country firms (i.e., firms based outside the EU/EEA) that engage in specific activities within the EU, such as providing guarantees, will be required to establish a branch or subsidiary, as applicable, in an EU member state. This requirement is intended to ensure that these firms are subject to the same regulatory standards and supervision as EU-based firms, thereby promoting

financial stability and protecting consumers within the EU.

2. Are there any laws or regulations limiting the amount of interest that can be charged by lenders?

There is no Luxembourg law or regulation setting a limit on the amount of interest that can be charged by lenders. Luxembourg courts may, however, reduce any contractually agreed interest rate to be paid by a Luxembourg borrower to the maximum legal interest rate in case the contractual rate is held manifestly excessive by such courts.

In addition, in accordance with article 1154 of the Luxembourg Civil Code, interest stipulated in a Luxembourg law agreement may not accrue where it is overdue on capital, unless such interest has been due for at least one year and the compounding has been specifically agreed for in an agreement.

The above rules may be considered matters of international public order under Luxembourg law.

3. Are there any laws or regulations relating to the disbursement of foreign currency loan proceeds into, or the repayment of principal, interest or fees in foreign currency from, your jurisdiction?

There are no specific Luxembourg laws or regulations in force which restrict loans being made or repaid in a foreign currency.

4. Can security be taken over the following types of asset: i. real property (land), plant and machinery; ii. equipment; iii. inventory; iv. receivables; and v. shares in companies incorporated in your jurisdiction. If so, what is the procedure – and can such security be created under a foreign law governed document?

Yes, under Luxembourg law security can be granted over all of the above listed types of assets, as further explained hereafter.

i. real property (land) and plant

Land, connected rights and assets attached to the land (such as buildings) can be collateralized under Luxembourg law. The most common approach is the granting of security through a contractual mortgage (*hypothèque*).

To be valid, a Luxembourg law mortgage needs to be evidenced in the form of a notarial deed, passed before a Luxembourg notary (except for mortgages granted in favour of the *Banque et Caisse d'Épargne de l'État*).

Such notarial deed shall clearly identify the mortgaged property and the secured amount. The secured obligations must be certain and liquid, while either the mortgagee must be the person to whom the secured amount is owed or a parallel debt structure needs to be created (as further explained in our answer to Question 13.).

The mortgage deed shall be registered with the mortgage register (*Bureau des Hypothèques*) where the mortgaged property is located and with the Luxembourg Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement, des domaines et de la TVA*).

A contractual mortgage becomes enforceable against third parties upon registration with the competent mortgage register (*Bureau des Hypothèques*). Such registration is valid for a renewable 10-year period.

ii. machinery, equipment and inventory

Security over machinery, equipment or inventory shall take the form of a civil law or commercial law pledge and be executed either by way of a notarial deed or under private seal. The perfection of such pledge requires the transfer of physical possession of the relevant collateral to the secured party and is thus uncommon in practice.

Machinery, equipment and inventory may, however, also be pledged under a pledge over a going concern/business universality (*gage sur fonds de commerce*). Such pledge usually includes all the assets of the pledgor (excluding real estate) such as customers, trademarks and patents, business name and goodwill, rolling stock and other tools, equipment and up to 50% of the value of the inventory. A pledge over a going concern/business universality is subject to specific requirements set out in a Grand Ducal Decree of 27 May 1937 and can only be granted to authorised credit institutions, notaries or breweries. It shall be evidenced in writing and registered with the competent mortgage register (such registration being valid for a renewable 10-year period). Registration is subject to *ad valorem* taxes.

iii. receivables

Security rights over receivables are very common in

Luxembourg. They may take two forms: a pledge over receivables or a transfer of ownership by way of security (the latter being rarely used in practice).

Both forms are provided for in the Luxembourg act of 5 August 2005 on financial collateral arrangements, as amended (the "**Luxembourg Collateral Act**") which allows fast and out-of-court enforcement of financial collateral arrangements and contains certain lender friendly provisions in case of bankruptcy.

A pledge over receivables can be created under written private seal and it takes effect between the parties and against third parties as of the date of execution of the pledge agreement.

However, as long as the debtor of the receivables did not have knowledge of the creation of the pledge, such debtor may validly discharge the relevant claim if payment thereof is made to the pledgor. It is hence recommended to make the debtor party to the receivables pledge agreement or to notify the pledge to the debtor with a request of acknowledgment (under which it is also common to obtain from the debtor a waiver of its rights of set-off and of any defence it may have against the pledgor).

Another type of security right over claims governed by the Luxembourg Collateral Act is a pledge over cash accounts held in Luxembourg. It can be created under written private seal and is perfected towards third parties by the execution of an account pledge agreement between the pledgor and the pledgee and towards the account bank by the sending of a notice and the confirmation by the account bank (usually contained in an acknowledgment form) that it waives all its rights over the relevant account (including the first ranking pledge that Luxembourg banks usually hold over such accounts as per their general terms and conditions). The operation of the pledged account may be freely agreed upon between parties, without affecting the validity of the pledge.

A recent legislative development clarified that pledges over insurance contracts is possible; for the case of life insurance contracts certain further requirements apply.

v. shares in companies incorporated in Luxembourg

Pledges over shares in companies incorporated in Luxembourg are the most common type of security rights (a security assignment is also possible but rarely used in practice).

Such pledges are governed by the Luxembourg Collateral Act and can be created under written private seal.

Their perfection formalities depend on the form of shares pledged. Shares issued by a Luxembourg company are generally issued in registered form and a pledge over such type of shares is perfected by the registration of the pledge in the shareholders' register of the company whose shares are pledged.

Governing law

According to Luxembourg conflict of law rules, Luxembourg courts apply the *lex rei sitae* in relation to the creation, perfection and enforcement of a security interest. Assets located in Luxembourg shall thus be pledged under Luxembourg law governed documents to ensure the due perfection and enforcement of the relevant security rights. Any foreign law perfection requirements for non-Luxembourg parties to such agreements (or foreign debtors in the case of a pledge over receivables) shall also be taken into account.

5. Can a company that is incorporated in your jurisdiction grant security over its future assets or for future obligations?

Under the Luxembourg Collateral Act, it is possible for a pledgor to grant security over present and future qualifying collateral (i.e. financial instruments and claims) without the need to designate them specifically (subject however to certain perfection requirements when the relevant assets come into existence).

Outside the scope of the Luxembourg Collateral Act, it is also in principle possible to grant a commercial law pledge over future assets but given that such pledge requires a physical dispossession of the collateral to be effective, such pledge may be regarded as a mere undertaking to pledge (*promesse de gage*) until the relevant assets come into existence. Finally, mortgages can only be granted over existing assets.

Regarding the possibility to grant security to secure future obligations, the Luxembourg Collateral Act expressly provides for such possibility. It is also possible to grant a civil law/commercial law pledge to secure future obligations. As regards mortgages, they are only valid if they secure certain and liquid obligations determined in the mortgage deed.

6. Can a single security agreement be used to take security over all of a company's assets or are separate agreements required in relation to each type of asset?

Except for pledges over a going concern/business universality (*gage sur fonds de commerce*), there is no concept of "all asset" security or "floating charge" recognised under Luxembourg law.

Under the Luxembourg Collateral Act, it is possible for a company to pledge all the qualifying collateral (financial instruments and claims) it holds without designating them specifically. However, as different perfection requirements apply depending on the type of assets pledged (typically shares, receivables and bank accounts), it is more common to enter into separate security documents per asset type.

Certain security interests are also subject to a specific regime (e.g. mortgages) and may hence only be documented under a separate agreement/notarial deed (as applicable).

In cross-border financings, it is however common for a Luxembourg obligor to grant a foreign law governed floating charge or debenture but, in such case, it is recommended to exclude any assets located in Luxembourg from the scope of such security (please see our answer to Question 4. regarding the governing law of pledges over assets located in Luxembourg).

7. Are there any notarisation or legalisation requirements in your jurisdiction? If so, what is the process for execution?

There are no such requirements under Luxembourg law for security interests governed by the provisions of the Luxembourg Collateral Act nor for most civil law/commercial law pledges.

Mortgages over real estate, aircrafts or ships are evidenced by way of a notarial deed. The same holds true for pledges over a going concern/business universality and pledges over machinery/equipment which can however also be documented in a private instrument. Powers of attorney are generally granted for the execution of notarial deeds and depending on the place of execution of the power of attorney or of localization/registration of the grantor, certain notarisation and legalisation/apostille requirements may apply.

8. Are there any security registration requirements in your jurisdiction?

Under Luxembourg law, there is no registration requirement in relation to the execution, performance or enforcement of Luxembourg law security agreements, except for mortgages, pledges over a going concern/business universality (*gage sur fonds de commerce*) and security rights over specific types of assets (such as aircrafts, certain vessels, IP rights, etc.).

The Luxembourg Collateral Act requires that a pledge over registered shares shall be recorded in the shareholder register (privately held by Luxembourg companies at their registered office) of the company whose shares are pledged.

9. Are there any material costs that lenders should be aware of when structuring deals (for example, stamp duty on security, notarial fees, registration costs or any other charges or duties), either at the outset or upon enforcement? If so, what are the costs and what are the approaches lenders typically take in respect of such costs (e.g. upstamping)?

As a general note, there are no particular material costs related to the taking of Luxembourg law security rights governed by the Luxembourg Collateral Act (unless these are voluntarily registered). Costs are further minimized as their enforcement can be completed without the initiation of court proceedings.

Costs which should be taken into consideration when structuring deals apply to mortgages and pledges over a going concern/business universality (*gage sur fonds de commerce*) and are as follows: (i) a fee of 0.24% on the principal amount of the secured obligations, (ii) a tax of 0.05% on the principal amount of the secured obligations for first registration and renewal (required every 10 years) and (iii) notarial fees calculated based, *inter alia*, on the value of the encumbered asset, the secured amount and the complexity of public searches.

10. Can a company guarantee or secure the obligations of another group company; are there limitations in this regard, including for example corporate benefit concerns?

There is no Luxembourg legislation specifically addressing the granting of guarantees or security interests to guarantee/secure the obligations of another group company. The concept of "group of companies" is itself not defined under Luxembourg law.

However, based on French and Belgian court precedents, to which Luxembourg courts may turn for guidance, it is

generally admitted that a Luxembourg company may validly grant a guarantee or a third party security for the obligations of a subsidiary, a parent company or an affiliated company if the following cumulative conditions are met:

i. The corporate object of the company expressly allows the granting of a guarantee and/or third party security to such group company;
ii. the company derives a benefit from the giving of the guarantee/third party security;
iii. the company is a member of a structured group with a common economic strategy; and
iv. the commitments of the company granting the guarantee and/or third party security are not disproportionate to the commitments of any other group companies involved in the same transaction and do not exceed the company's financial capacity.

11. Are there any restrictions against providing guarantees and/or security to support borrowings incurred for the purposes of acquiring directly or indirectly: (i) shares of the company; (ii) shares of any company which directly or indirectly owns shares in the company; or (iii) shares in a related company?

Luxembourg public limited liability companies (*sociétés anonymes*) and corporate partnership limited by shares (*sociétés en commandite par actions*) are prohibited from granting loans, guarantees, security interests or advancing funds to a third party for the acquisition of their own shares, unless a whitewash procedure is followed. Such whitewash procedure requires, *inter alia*, sufficient distributable reserves at least equal to the amount of the financial assistance provided and an approval of the shareholders and is rarely used in practice.

Unlawful financial assistance may result in the guarantee or security interest being declared void and may trigger civil and criminal liabilities of the target's directors/managers.

The financial assistance prohibition only applies to transactions entered into by a company to support the acquisition of its own shares (and not the shares of its direct or indirect shareholders or of related companies) but the corporate interest of the company granting the assistance shall however always be taken into consideration.

The financial assistance rules do not apply to private limited liability companies (*sociétés à responsabilité limitée*) (but the corporate interest of the company shall still be carefully considered).

12. Can lenders in a syndicate (or, with respect to private credit deals, lenders in a club) appoint a trustee or agent to (i) hold security on the lenders's behalf, (ii) enforce the lenders' rights under the loan documentation and (iii) apply any enforcement proceeds to the claims of all lenders in the syndicate?

The Luxembourg Collateral Act specifically provides that a security over financial collateral (i.e. financial instruments or claims) may be provided in favour of a person acting on behalf of the collateral taker, a fiduciary or a trustee in order to secure the claims of third-party beneficiaries, whether present or future, provided that these third-party beneficiaries are identified or identifiable. As such, a security trustee/security agent can act on behalf of other syndicate members and hold qualifying collateral/enforce the syndicate rights under the pledge agreement and apply the enforcement proceeds to the claims of all lenders in the syndicate, even where such security agent/security trustee is not itself a creditor of the secured debt.

The Luxembourg Act of 10 July 2020 on professional payment guarantees (the "**PPG Act**") also introduced the possibility for a guarantee expressly submitted to the PPG Act to be granted in favour of a person acting on behalf of the beneficiaries, of a fiduciary or a trustee, to guarantee third party beneficiaries' present or future claims on the condition that such third-party beneficiaries are identified or identifiable.

Outside the scope of the Luxembourg Collateral Act and the PPG Act, the holder of a security interest or the beneficiary of the guarantee shall, in principle, be the same person to whom the secured obligations are owed (please see our answer to Question 13. for ways to structure this).

13. If your jurisdiction does not recognise the role of an agent or trustee, are there any other ways to achieve the same effect and avoid individual lenders having to enforce their security separately?

As mentioned in our answer to Question 12., the role of the agent or trustee is recognized where a security right is created over financial collateral (financial instruments

and claims) under the Luxembourg Collateral Act or where a guarantee is expressly submitted to the PPG Act.

However, outside the scope of these two acts, the holder of a security right or the beneficiary of a guarantee must be the same person to whom the secured obligations are directly owed as a lender. To address this concern, parallel debt structures under which an appointed third party acts as pledgee/beneficiary and under which parallel debt obligations (i.e. newly created obligations of the borrowers towards the agent mirroring the obligations of the borrowers towards the lenders) are secured, have been accepted in the market (e.g. for pledges over movable property or mortgages). In such case, only the agent would however benefit from a right *in rem* and the underlying creditors only have a contractual recourse against the agent. Such parallel debt structures have however, to our knowledge, never been tested before Luxembourg courts.

14. Do the courts in your jurisdiction generally give effect to the choice of other laws (in particular, English law) to govern the terms of any agreement entered into by a company incorporated in your jurisdiction?

The choice of a foreign law (including English law) as the governing law of any agreement entered into by a Luxembourg company is generally recognized and given effect to by Luxembourg courts, subject to certain reservations laid down in Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations.

A court of competent jurisdiction in Luxembourg may however not apply the chosen foreign law if such choice is abusive and/or if:

i. such choice of law is abusive and/or if it is not pleaded and proved;
ii. such foreign law is contrary to overriding mandatory provisions (*lois de police*) of Luxembourg or other jurisdictions where all other elements relevant to the situation at the time of the parties' choice are located;
iii. the applicable provisions would be manifestly incompatible with the public policy of Luxembourg or the European Union, or if the obligations arising out of a contract have to be or have been performed in another jurisdiction with applicable mandatory provisions; or
iv. a party is subject to insolvency proceedings, in which case it would apply, to the effects of such insolvency, the laws of the jurisdiction where such insolvency proceedings were regularly opened (subject to certain exceptions set out in Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)).

15. Do the courts in your jurisdiction generally enforce the judgments of courts in other jurisdictions (in particular, English and US courts) and is your country a member of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (i.e. the New York Arbitration Convention)?

New York judgments

Final and conclusive judgments of U.S. courts will be recognized and enforced in Luxembourg without further review of the substantive matters adjudicated thereby or re-examination of the merits of the case, subject to the enforcement (*exequatur*) procedure of the Luxembourg New Code of Civil Procedure. Under Articles 678 *et seq.* of the Luxembourg New Code of Civil Procedure, *exequatur* shall be granted if the Luxembourg court is satisfied that all of the following conditions are met: (i) the foreign court awarding the judgement has jurisdiction to adjudicate the respective matter under applicable foreign rules, and such jurisdiction is recognised by Luxembourg private international and local law; (ii) the foreign judgement is enforceable in the foreign jurisdiction; (iii) the foreign court has acted in accordance with its own procedural laws; (iv) the judgement was granted following proceedings where the counterparty had the opportunity to appear, and if it appeared, to present a defence; and (v) the foreign judgement does not contravene public policy (*ordre public*) as understood under the laws of Luxembourg or has been given in proceedings of a criminal nature.

The US have signed the Convention of 30 June 2005 on Choice of Court Agreements ("**Hague Convention**") and the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, but none of these has entered into force yet.

English judgments

Since Brexit, the *exequatur* procedure laid down above shall also apply to the enforcement of English courts judgments, except if the relevant agreement includes an exclusive choice of court clause. In case of such exclusive choice of jurisdiction, the enforcement procedure of the Hague Convention, as construed by Luxembourg courts, shall apply.

This approach will soon change as the UK joined the Hague Judgments Convention 2019 (**HJC**) in November 2023 and ratified it on 27 June 2024. As from the entry into force of the HJC on 1 July 2025, recognizing and enforcing UK judgments will be easier in Luxembourg. Even non-exclusive or asymmetric English jurisdiction clauses will be enforceable.

New York Arbitration Convention

Luxembourg is a party to the New York Arbitration Convention, which was ratified by Luxembourg pursuant to a law dated 20 May 1983.

16. What (briefly) is the insolvency process in your jurisdiction?

In accordance with the provisions of Article 437 of the Luxembourg Commercial Code ("**LCC**"), the Luxembourg Commercial Court (the "**Court**") can open bankruptcy proceedings in relation to a company if (and only if) the following cumulative conditions are met: (a) the company is unable to pay its debts as they become due out of its own cash flow (i.e. due and payable liabilities exceed available assets (*cessation de paiements*)) and (b) the company is unable to obtain additional credit from its creditors or third parties (e.g. banks) (*ébranlement du credit*).

The payment term of all claims against the bankrupt company is accelerated upon the adjudication in bankruptcy. As for the administration of the bankruptcy, Articles 444 and 466 LCC provide that the managers/directors of the bankrupt company will be released from office as from the date of the adjudication in bankruptcy and one or more trustees in bankruptcy (*curateurs*) will be appointed by the Court to manage the bankrupt company's affairs and realise its assets in accordance with the provisions of the LCC. The trustee in bankruptcy must act as a reasonably prudent person (*bon père de famille*) in the management of the bankruptcy and shall act in the interest of the bankrupt company and the company's creditors as a whole (*masse des créanciers*). It shall perform its functions under the supervision of a bankruptcy judge (*juge-commissaire*) with the objective of *inter alia* (a) managing the bankrupt company's affairs (as the incumbent managers/directors are released from office), (b) immediately realising perishable assets or subject to imminent depreciation (Article 477 LCC), with the prior approval of the bankruptcy judge, (c) selling immovable assets with prior court authorization and (d) distributing the proceeds from the realised assets to creditors.

Pursuant to Article 496 LCC, the creditors of the bankrupt company are required to file a declaration of their respective claims with supporting documents at the registry of the Court within the time limit set in the adjudication of bankruptcy . In terms of claims' filing deadlines, no distinction is made between foreign creditors and local creditors, but the bankruptcy judge may grant foreign creditors extensions for filing deadlines in certain circumstances.

Further steps shall be implemented towards the satisfaction of the declared and admitted claims to the bankruptcy, as per the provisions of Articles 528 *et seq.* of the LCC:

- the trustee in bankruptcy will prepare the distribution plan;
- a meeting of the company's creditors (i.e. creditors whose claims have been admitted to the bankruptcy) will be convened, and the distribution plan will be submitted by the trustee in bankruptcy for approval by the bankruptcy judge only. Creditors can object to the distribution plan (Article 533 LCC); and
- once approval is obtained from the bankruptcy judge and all the assets have been distributed accordingly, the trustee in bankruptcy will then request the Court to close the bankruptcy proceedings. If the bankrupt company were then to be *in boni*, it would automatically continue as a going concern following the Court's judgement closing the bankruptcy proceedings.

Since November 2023, the new law of 7 August 2023 (bill 6539A) aiming at business preservation, further modernisation of bankruptcy law and transposing Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) has entered into force on 1 November 2023. (the "**New Insolvency Law**").

The New Insolvency Law abolished certain proceeding (controlled management (*gestion contrôlée*) and composition with creditors (*concordat préventif de faillite*)), which were not used anymore in practice. It further implements Directive 2019/1023 on restructuring and insolvency proceedings into Luxembourg law and thus introduced certain new proceedings (with and without court proceedings), the objective of which is primarily the continuance of the business of the relevant company. These include out-of-court mutual agreement

(*réorganisation extra-judiciaire par accord amiable*), judicial reorganisation in the form of a stay to enter into a mutual agreement (*sursis en vue de la conclusion d'un accord amiable*), judicial reorganisation by collective agreement (*réorganisation judiciaire par accord collectif*), judicial reorganisation by transfer of assets or activities (*réorganisation judiciaire par transfert sous autorité de justice*).

17. What impact does the insolvency process have on the ability of a lender to enforce its rights as a secured party over the security?

In accordance with the provisions of Article 444 LCC, the bankrupt company shall be prevented from administering its assets as from the date on which it is declared bankrupt by the Court and all payments, transactions and acts carried out by the debtor as from the date of the adjudication in bankruptcy shall be deemed null and void, including the enforcement of any security granted over the bankrupt company's assets to a lender.

However, the Luxembourg Collateral Act contains an important exception to this principle and increases the protection of collateral holders as it enables secured creditors holding qualifying collateral to enforce their security interests notwithstanding the insolvency of the collateral provider, subject to restrictions which exist in case of fraud.

18. Please comment on transactions voidable upon insolvency.

The Court may determine the period for which payments shall be suspended, as per the provisions of Article 442 LCC. It shall set a date prior to the adjudication in bankruptcy, as from which time the company shall be deemed to be in a state of suspension of payments (*cessation de paiements*). Such hardening period or doubtful period (*période suspecte*) cannot be set more than six months (Article 442 LCC) prior to the date of the adjudication in bankruptcy. Certain acts and transactions carried out during such hardening period or within the ten days preceding this period (Article 445 LCC), may be voided.

Article 445 LCC provides for the *ipso jure* voidance of certain acts and transactions carried out during the hardening period. The transactions and acts referred to in Article 445 LCC are (a) transactions transferring property free of charge or without reasonable consideration, (b) payments by whatsoever means of debts that are not due yet, (c) payments of debts by non-cash means, and (d) the grant of security for debts contracted prior to the start of the hardening period.

Article 446 LCC provides that the Court may declare void all other payments made by the company for debts that are due, and all other transactions made in return for consideration after the suspension of payments and before the adjudication in bankruptcy, if the other party was aware of the company's inability to meet its payment obligations. However, the fact that the other party knew about the company's financial distress does not necessarily mean that it was also aware of the company's inability to meet its payment obligations.

Finally, Article 448 LCC and Article 1167 of the Luxembourg Civil Code, both relating to fraudulent conveyance (*actio pauliana*) each enable a creditor to challenge any fraudulent payment, transaction or transfer made prior to the bankruptcy of the company, without any time limit.

However, as mentioned in our answer to Question 22., Luxembourg security interests falling within the scope of the Luxembourg Collateral Act, as well as their enforcement measures remain valid and enforceable against third parties (including a bankruptcy trustee) even if entered into during the hardening period (save in case of fraud).

19. Is set off recognised on insolvency?

The LCC generally prohibits set-off (either legal, judicial or contractual) of pre-existing claims to the extent they were not liquid, payable and fungible (*liquide, exigible, fongible*) prior to the adjudication in bankruptcy, except for statutory set-off where the claims are related and interdependent (*créances connexes*) (i.e. they arise from mutual obligations under the same agreement concluded before the hardening period (*période suspecte*)), or if the conditions for statutory set off (i.e., the claims and cross-claims are liquid, due and mutual) were met prior to the adjudication in bankruptcy. In addition, netting arrangements governed by the Luxembourg Collateral Act remain valid and enforceable against third parties despite the opening of insolvency proceedings.

The general prohibition of set-off in the context of bankruptcy (save for the exceptions mentioned above) ensures that all creditors of the bankrupt company are treated equally and is in line with the purpose and intent of Article 444 LCC, which provides that the debtor shall be prevented from administering its assets as from the date on which it is declared insolvent by the competent court and that all payments, transactions and acts carried out

by the debtor as from the date of the adjudication in bankruptcy shall be deemed null and void.

20. Are there any statutory or third party interests (such as retention of title) that may take priority over a secured lender's security in the event of an insolvency?

A security right will not necessarily have the priority over enforcement proceeds that has been agreed in the relevant security agreement, but may be subject to certain preferential liens (*privilèges*) on movable assets of debtors in favour of, *inter alios*, Luxembourg tax authorities and social security institutions, as well as employees in respect of their claims (if any); they may take precedence over the rights of other secured or unsecured creditors.

Notwithstanding the above, Luxembourg preferential liens may not affect a security right in the form of title security (*droit de propriété*) or, in certain circumstances, in the form of a retention right (*droit de rétention*) under the Luxembourg Collateral Act. The same holds true for mortgagees who may freely enforce their mortgage despite the adjudication in bankruptcy of the mortgagor and are considered as being outside the bankruptcy estate (*hors masse*).

21. Are there any impending reforms in your jurisdiction which will make lending into your jurisdiction easier or harder for foreign lenders?

With regard to insolvency laws in Luxembourg, a new procedure for administrative (i.e. the participation of the administrative court) dissolution without liquidation was introduced as of 1st February 2023 for "ghost" companies. The law of 7 August 2023 (bill 6539A) aiming at business preservation, further modernisation of bankruptcy law and transposing Directive (EU) 2019/1023 (Directive on restructuring and insolvency) has entered into force as from 1 November 2023.

As mentioned above in our answer to Question 16, certain outdated proceedings like controlled management (gestion contrôlée), composition with creditors (*concordat préventif de faillite*) have been abolished and replaced by out-of-court mutual agreement (*réorganisation extra-judiciaire par accord amiable*), judicial reorganisation in the form of a stay to enter into a mutual agreement (*sursis en vue de la conclusion d'un accord amiable*), judicial reorganisation by collective agreement (*réorganisation judiciaire par accord collectif*), judicial reorganisation by transfer of assets or activities (réorganisation judiciaire par transfert sous autorité de justice) pursuant to the New Insolvency Law.

Reflecting the general tendency in the European Union, the law of 15 March 2023 (bill 8055) has introduced a clarification in the definition of financial instruments that can be pledged under Luxembourg law, to include securities accounts maintained in or through secure electronic recording devices, including distributed electronic registers or databases.

Recent amendments to the Luxembourg Collateral Act clarified and modernised the enforcement process of Luxembourg pledges subject to that law.

Such amendments concern (i) the trigger events for enforcement, (ii) the enforcement of financial collateral arrangements by way of sale and (iii) the application of enforcement proceeds.

The Collateral Law now clarifies that the parties to a Luxembourg pledge agreement may agree on any event "whatsoever" to trigger its enforcement, meaning that enforcement does not necessarily require a payment default in respect of the secured obligations if so agreed between parties.

Regarding the enforcement as such, the Luxembourg Collateral Act now expressly covers enforcement of pledges over claims under insurance policies (other than life insurance policies).

In addition, the Luxembourg Collateral Act no longer refers to a public auction by the Luxembourg stock exchange as the default competent authority for an enforcement by means of a public sale of the pledged assets, but sets out a more detailed, yet flexible framework, which allows public auctions to be carried out by a notary or bailiff. Where the pledged assets are admitted to trading, the Luxembourg Collateral Act has now extended the types of platforms on which a sale of the pledged assets may occur in the context of an enforcement.

The Luxembourg Collateral Act has further been amended by the Luxembourg legislator to introduce a new definition of "national or foreign provisions" to include "the provisions of another State that is a contracting party to the European Economic Area Agreement, or of another State". The legislator explicitly stated that the original intention of the Luxembourg Collateral Act was to cover all foreign insolvency proceedings, not just those of EEA member states. This amendment, which came into force with the law of 15 July 2024 on the transfer of non-performing loans, was intended as a clarification rather

than an addition.

This amendment was recently confirmed by case law in Luxembourg.

On 19 December 2024, the Luxembourg Supreme Court ruled that Article 20(1) of the Law of 5 August 2005 on financial collateral arrangements must be interpreted to ensure the validity and enforceability of financial collateral arrangements under Luxembourg law in the context of insolvency proceedings opened in third countries, not just within the EEA. .Although the Luxembourg Collateral Act had already been amended in this sense, this ruling further underscores the attractiveness of Luxembourg law in protecting creditors.

22. What proportion of the lending provided to companies consists of traditional bank debt versus alternative credit providers (including credit funds) and/or capital markets, and do you see any trends emerging in your jurisdiction?

Although there is neither any official statistics nor publicly available data in Luxembourg to support this statement, we have seen a clear uptick in the proportion of lending provided to Luxembourg companies by alternative credit providers over the past few years. Debt funds have in particular gained a significant market share. 90 % of the top 30 debt fund managers worldwide are present in Luxembourg. As for the Luxembourg private debt funds, they are mainly focused on three debt strategies: direct lending (which saw a slight decrease), distressed debt and mezzanine (both presenting an increase).

It is also worth mentioning that Luxembourg is the leading venue in Europe for the listing of high yield debt securities issued by Luxembourg issuers or foreign issuers.

23. Please comment on external factors causing changes to the drafting of secured lending documentation and the structuring of such deals such as new law, regulation or other political factors

Distributed Ledger Technology (DLT) is becoming increasingly important in practice. Luxembourg legislation has been amended several times in recent years to reflect technological advances, particularly in the area of securities issuance. Although the legislation is technology-neutral, it explicitly refers to DLT.
In this context, the CSSF has also published a non-binding document in the form of a “white paper” aimed at guiding interested professionals in the conduct of their due diligence process related to the DLT and its use in the provision of services in the Luxembourg financial sector.

ESG considerations are increasingly important for financial sector participants, including for Luxembourg secured lending documentation, usually in line with LMA principles and guidelines.

The Covid-19 pandemic has firmly established the use of electronic signatures in Luxembourg law governed contracts, including for secured lending transactions.

Secured lending will certainly be significantly influenced by legislation promoting sustainability:

- A bill of law 8370 is pending in to transpose Directive 2022/2464 on Corporate Sustainability Reporting (CSRD Directive) into Luxembourgish law. Its adoption will strengthen the existing requirements on sustainability reporting.
- We are waiting for a bill to implement the Directive 2024/1760 on Corporate Sustainability Due Diligence (CS3D Directive or CSDDD Directive) which aims to promote sustainable and responsible corporate practices within companies' operations and their global value chains. In-scope companies will have to identify and mitigate human rights and environmental impacts of their actions.
- A bill is also expected to implement the Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and **loan origination** by alternative investment funds (called AIFMD II).

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