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Luxembourg: Law & Practice

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LUXEMBOURG

Law and Practice

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1. Loan Market Panorama

1.1 Impact of the Regulatory Environment and Economic Cycles

Luxembourg's economy has been strong and steadily expanding over recent years. Prior to 2020, the real economy was booming and the business and credit cycle was moving upwards. Nonetheless, the health crisis caused by COVID-19 affected the real economy which shrank in 2020 and suffered a -1.3% recession. Nevertheless, this, admittedly temporary, economic slowdown was followed by significant (6.9%) growth in GDP in 2021. Luxembourg's GDP has grown by 8.66% compared to 2020. The loose monetary policy implemented by the ECB and the accumulation of wealth during the previous years led to a buoyant economic situation which made capital markets and banking institutions more accessible to financial participants and, consequently, facilitated the realisation of investment in the real economy. As a result the Luxembourg debt marked has grown significantly during 2021.

The political and economic developments of 2022 are expected to slow the expansion of the global and Luxembourgish debt market. Naturally, the interest rate increase, implemented by the ECB as a reaction to high inflation within the eurozone, is considered to have adversely affected financial markets, which seem to be following a bearish path. The contraction of the loan market is yet to be seen and assessed. Nevertheless, Luxembourg has shown its resilience and adaptability to unexpected adverse developments repeatedly in the past. It is worth mentioning that, despite the latest adverse economic developments, economists project a growth of 2–3% for the Luxembourg economy for 2022 and 2023.

In fact, Luxembourg remains a major international financial centre, with a booming asset management industry (with a total of EUR5.8 billion of assets under management as at 31 December 2021) and a sound banking system, with more than 122 established banks (as at 31 July 2022). Luxembourg's financial centre continues to attract financial institutions and investors from across the world.

1.2 Impact of the COVID-19 Pandemic

The Luxembourg economy, having had growth of 3.1% and 2.3% in 2018 and 2019 respectively, was less impacted by the COVID-19 pandemic than other EU countries. 2020 was marked by a -1.3% recession, which, despite being better than average compared to the rest of the EU, is the sharpest decline since the financial crisis in 2008–09 for the Luxembourg economy. Similar to the global economy, lockdown measures, especially in the first half but also in the fourth quarter of 2020, have had a significant impact on private consumption and Luxembourg's international trade in goods and non-financial services. The financial soundness of the Luxembourg economy allowed the Luxembourg government to provide financial assistance to certain businesses – including those operating in the hospitality, accommodation and entertainment sectors – in order to help them to face their liquidity shortages related to the coronavirus outbreak.

Despite the above, the financial sector of Luxembourg has shown its resilience and stability. Banks are considerably stronger and in a much better liquidity position than in the 2009–09 financial crisis. Their strong position is shown by the relatively insignificant effect that the COVID-19 pandemic had on the credit market (see **1.1 Impact of the Regulatory Environment and Economic Cycles**). Additionally, the soundness and strong foundation of the economy allowed

Luxembourg to record 6.9% growth in 2021, marking the complete rebound from the effects of the global health crisis. This development also indicated that the economic contraction was a temporary reaction to unprecedented phenomena rather than a sign of deeper malaise.

1.3 The High-Yield Market

The Luxembourg Stock Exchange (LuxSE) is the leading European listing venue for high-yield bonds. Together with the European High Yield Association, LuxSE published in 2006 the first EU guidance and rules on listing high-yield bonds, allowing corporate issuers with complex ownership structures access to capital markets. LuxSE now accounts for approximately 50% of the listed high-yield bond market in Europe. A large number of such high-yield bonds are listed and admitted to trading on the multilateral trading facility (Euro MTF) operated by LuxSE. Being outside the scope of (i) the Prospectus Regulation (EU) 2017/1129 and (ii) the transparency requirements set forth in Directive 2004/109/EC, the Euro MTF is not a regulated market and, hence, offers a lighter listing and disclosure framework to issuers.

High-yield bonds are regularly issued by corporate entities for financing, refinancing and general corporate purposes.

Even though the majority of high-yield bonds listed on the LuxSE are governed by foreign laws, market players now choose Luxembourg more frequently as the governing law of the high-yield bonds issue documentation. Furthermore, thanks to a stable and reliable legal framework, Luxembourg vehicles are often used for the issue of high-yield bonds.

Furthermore, since October 2020, the European Stability Mechanism has used Luxembourg law as the governing law for the issue of its euro-denominated bonds. This has been seen as a major recognition of the Luxembourg legal framework and would certainly give comfort to, among others, supranational debt issuers, which frequently use the LuxSE as a listing venue for sovereign bonds, to follow this call to overcome the choice of foreign laws for the issue of debt instruments admitted to trading and/or listed on a LuxSE venue.

1.4 Alternative Credit Providers

The granting of loans is, in principle, a regulated activity, the performance of which requires the holding of a licence from the *Commission de Surveillance du Secteur Financier* (CSSF), as further detailed in **2.1 Authorisation to Provide Financing to a Company**.

Despite the above, and as the main domicile for non-bank financial institutions in Europe and thanks to a booming alternative finance industry, the Luxembourg loan market continues to see a strong growth of alternative credit providers (such as securitisation vehicles and regulated or alternative investment funds) benefiting from exemptions to licensing requirements (see **2.1 Authorisation to Provide Financing to a Company** for the scope of exemptions).

1.5 Banking and Finance Techniques

See **5.4 Restrictions on Target** on the recent change of the Law of 10 August 1915 on companies, as amended (the "Companies Law") following adoption of draft bill No 7791.

1.6 Legal, Tax, Regulatory or Other Developments

Below are the main recent legislative initiatives both at the EU and national level that are likely to affect the credit market in Luxembourg.

Modernisation of the Securitisation Law

The Law of 25 February 2022, which amends the Law of 22 March 2004 on securitisation (the "Securitisation Law"), has been enacted by the Luxembourg Parliament. The new law further enhances the flexibility of the Securitisation Law and increases the attractiveness of securitisations for investors. The amendments address a number of requests from market participants. The key changes include the following.

- The refinancing of a securitisation transaction is no longer limited to securities and would be extended to any financial instrument (allowing for the financing of securitisation undertakings by all types of loans).
- The active management of the securitised assets in certain types of transactions is now expressively permitted, as long as the transactions are not financed by way of offering financial instruments to the public; this new feature allows for securitisation of actively managed collateralised debt obligations (CDOs) and collateralised loan obligations (CLOs) in private placement deals.
- Flexibility around the entering of securitisation undertakings into collateral arrangements has been increased by enlarging the scope of parties who can benefit from such security interest and effectively allowing the parties to have more flexibility to structure their collateral arrangements in the most suitable way.
- A certain flexibility is provided to the corporate structuring of securitisation transactions by widening the range of company forms that can be incorporated as a securitisation company; in particular, securitisation companies could, if the bill is passed, be incorporated in the form of a common limited partnership or a special limited partnership.

The Law of 25 February 2022 also establishes the requirements under which a securitisation vehicle needs to be authorised by the CSSF, by clarifying the condition under which an SPV is deemed to issue securities to the public on a continuous basis.

The Law on Inactive Accounts Inactive Safe-Deposit Boxes and Unclaimed Insurance Payments

The Law on Inactive Accounts Inactive Safe-Deposit Boxes and Unclaimed Insurance Payments was enacted on 30 March 2022 and entered into force on 1 June 2022. Similar to the Belgian and French legal regimes, the law creates a Luxembourg legal regime in order to strengthen the protection of clients and establishes professional obligations for banks and insurers with the aim of preventing the situation of inactive accounts or safe-deposit boxes and of unclaimed insurance payments.

The law includes the following main components.

- A prevention component that sets out a series of measures to be put in place by banks and insurers in order to prevent accounts inactivity (ie, banks are required to maintain appropriate internal procedures in order to identify accounts susceptible of becoming inactive and to implement rules for the search for information on beneficiaries of such accounts and insurance undertakings should monitor the payability of insurance benefits).
- Reporting requirements – entities falling under the scope of the law and holding accounts in the name of their clients are required to inform the CSSF (or the *Commissariat aux Assurances* for insurance undertakings) and the Luxembourg Inland Revenue on:

(a) the total number of holders of inactive accounts and of the holders of safe-deposit boxes; and
(b) the overall balance of the inactive accounts as of 31 December of each year (such information is to be transmitted to the CSSF and the Luxembourg Inland Revenue by electronic means at the latest on 28 February of the following year).

- A consigning component at the *Caisse de Consignation*, which provides the obligation for banks and insurers to consign the relevant assets after a prolonged inactivity.
- A restitution component laying down the provisions for the restitution of consigned assets to the beneficiaries of the consigned assets; in this respect, it has to be noted that beneficiaries may request restitution from the *Caisse de Consignation* of assets consigned within a period 30 years.

EU Banking Rules

The law dated 20 May 2021 amending the Law on the Financial Sector dated 5 April 1993 (the "CRD V Law") introduced new provisions to the architecture of the legal framework governing the operation of credit institutions.

The CRD V Law introduced a variety of novel provisions relating to the governance, remuneration policy, own funds requirements and reporting of credit institutions. More specifically, and among other things, the CRD V Law:

- requires credit institutions to have in place appropriate monitoring arrangements for the testing of the suitability of the members of the management body thereof;
- provides that the rules governing the remuneration policy applied by banking institutions may henceforth apply on a consolidated, sub-consolidated or solo basis, depending on specific parameters;
- recognises and implements for the first time the requirement of gender neutrality in the remuneration policy; and
- provides that, if a credit institution is a branch of a third-country credit institution, it shall review and, if necessary, amend the internal procedures on reporting to the authorities to comply with the new annual reporting obligation towards the CSSF.

Despite the new rules imposed by the CRD V Law, the European Commission has recently adopted a review of the EU banking rules relating to the further amendment of the CRD V. Having gained important lessons from the COVID-19 pandemic and taking into consideration the necessity of approaching the EU banking rules from a greener perspective, the new framework will focus on strengthening the resilience of banking institutions to economic shocks, contributing to the green transition and ensuring sound management of EU banks and better protecting their financial stability.

Crowdfunding

Regulation (EU) 2020/1503 of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (the "Crowdfunding Regulation") entered into force on 10 November 2021. It introduces uniform requirements for the provision of crowdfunding services, the organisation, authorisation and supervision of crowdfunding service providers and the operation of crowdfunding platforms with the aim to provide access to finance for small and medium-sized enterprises which are under-served or not covered by the traditional banking system.

Non-performing Loans

On 8 December 2021, EU Directive 2021/2167 of 24 November 2021 (the "NPL Directive") was published in the Official Journal of the EU. The NPL Directive provides a framework for the development of secondary markets for non-performing loans and lays down requirements for credit servicers and credit purchasers in the context of a non-performing credit agreement. Although the NPL Directive does not apply to credit institutions as they carry out credit service activities as part of their normal business, it triggers requirements related to (i) information sharing with credit purchasers for the purpose of evaluating the credit agreements and (ii) notification to competent authorities with respect to the transferred credit portfolio. Luxembourg shall transpose the NPL Directive by 29 December 2023.

Recent Tax Developments

ATAD 1 and 2

From a tax perspective, the implementation of the Anti-Tax Avoidance Directives, ATAD 1 and ATAD 2, into Luxembourg domestic law had a significant impact on the Luxembourg loan market and especially on the repackaging of debts. ATAD 1 and ATAD 2 introduced a set of minimum standard rules to combat harmful tax practices; in particular, the interest deduction limitation rule and the anti-hybrid mismatch rules. From a practical perspective, the rules provided by the ATADs triggered complex tax structuring to be able to ensure tax neutrality for financing transactions. For instance, securitisation transactions are now to be carefully analysed and monitored in order to assess and ensure their continuing tax neutrality.

The Luxembourg tax authorities issued a circular on 25 March 2022 in order to provide more guidance on the practical implementation of the interest deduction limitation rule provided for by ATAD 1.

DEBBRA

On 11 May 2022, the European Commission issued a proposal for a directive laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes (DEBRA). If approved, the DEBRA provisions should apply as of 1 January 2024.

The purpose of DEBRA is to address the existing asymmetry in tax treatment leading to a preference for debt financing over equity investments. The provisions of DEBRA would apply to EU taxpayers which are subject to corporate income tax. However, financial undertakings such as credit institutions (as defined in Regulation (EU) No 575/2013), investment firms (as defined in Directive 2014/65/EU) and securitisation special-purpose entities (as defined in Regulation (EU) No 2017/2402) would be excluded from the scope of application of DEBRA.

In order to challenge the debt-equity bias, DEBRA foresees (i) an allowance on equity and (ii) a limitation on interest deduction.

The allowance on equity is calculated by multiplying the allowance base (difference between the equity at the end of (i) the tax year *n* and (ii) the tax year *n* -1) with the notional interest rate (risk free rate + risk premium ranging between 1% and 1.5%). 30% of such allowance will be deductible for CIT purposes over ten years. In the event that the allowance base is negative and does not result from losses or legal obligations, the proportionate amount will become taxable for ten years.

The limitation to interest deduction is set at 85% of the exceeding borrowing costs. As mentioned above, ATAD already provides for interest deduction limitation rules setting the limit at the higher of 30% of the taxable EBITDA or EUR3 million. In order for the two rules to be compatible, if the result under ATAD is lower than the result under DEBRA, the taxpayer would be entitled to carry forward or back the difference as per the rules provided by ATAD.

A certain number of European practitioners in the financial sector, as well as official authorities, expressed their concern regarding the DEBRA provisions. In particular, the introduction of additional interest deduction limitation rules would lead to even more uncertainty in an already complex field. In addition, the DEBRA rules do not provide for any carve-outs which are foreseen under ATAD (eg, a grandfathering rule for specific loans). It hence appears that the proposed limitation to interest deduction rules are neither necessary nor proportional.

Regarding the proposed allowance on equity, it is questionable whether it will effectively address the debt-equity bias due to the low interest rates fixed for the risk premium.

Further, it should be considered whether bankruptcy-remote vehicles such as securitisation vehicles that do not comply with the simple, transparent and standardised criteria, and which are not at risk, should be included in the list of excluded entities under DEBRA.

1.7 Developments in Environmental, Social and Governance (ESG) or Sustainability Lending

In line with the growing global demand for sustainable finance following the COP 21 agreement and the ratification of the UN Sustainable Development Goals, sustainable finance has gained a significant role in the Luxembourg financial sector, which is a leading international hub for sustainable finance.

It is worth noting that the world's first legal framework for green covered bonds was established in Luxembourg in 2018 and the country is expected to play a pivotal role in promoting the funding of ESG-compliant projects.

Initiatives taken at the level of the European Union, such as the EU Action Plan on sustainable finance, have created a certain number of regulatory standards for professionals in the finance industry (notably, the ESG disclosure requirements deriving from Regulation (EU) 2019/2088 and Regulation (EU) 2020/852), applying also to Luxembourg market players.

The following is an overview of the most recent changes affecting the banking regulatory architecture in Luxembourg.

EU Regulations

Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector (the SFDR), laying down harmonised rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products, applies to, among others, credit institutions providing portfolio management. While market participants were required to comply with most of the sustainability-related disclosures laid down in the SFDR as from 10 March 2021, as from 1 January 2022, credit institutions providing portfolio management have to comply with the provisions of the SFDR, relating

to the production of periodic reports, including the transparency of the promotion of environmental or social characteristics and of sustainable investments.

Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (the Taxonomy Regulation) applies to, among others, credit institutions providing portfolio management. It aims to provide transparency to investors and businesses and to prevent "greenwashing" by defining and harmonising at EU level the criteria following which a financial product or an economic activity could qualify as "environmentally sustainable".

Following the requirements introduced by the Taxonomy Regulation, financial market participants that make financial products available should disclose how and to what extent they use the criteria for environmentally sustainable economic activities to determine the environmental sustainability of their investments. Such disclosure applies as follows:

- as from 1 January 2022, concerning the environmental objectives of climate change mitigation and climate change adaptation; and
- as from 1 January 2023, concerning the other environmental objectives.

Domestic Law

With regard to local initiatives, the Luxembourg government, in co-operation with the private sector, founded in 2020 the Luxembourg Sustainable Finance Initiative (LSFI). Its main aspirations are to promote existing and upcoming sustainable finance initiatives, to co-ordinate and support the Luxembourg financial centre in taking impactful actions in the field of sustainable finance and to measure the progress that is made in this sector by collecting and analysing data on the Luxembourg financial industry in order to follow its progress in integrating sustainability. Through this initiative, the Luxembourg government has sent yet another strong signal of the county's determination to help mainstream sustainable finance.

Furthermore, Luxembourg was the first European country to launch a sustainability bond framework in September 2020. This framework, which meets the highest market standards, was also the first in the world to fully comply with the new recommendations of the European taxonomy for green financing. Following the establishment of the sustainability bond framework, Luxembourg has successfully issued its first sovereign sustainability bond, for an amount of EUR1.5 billion, with a 12-year maturity and bearing a negative interest rate of -0.123%. The bonds have been listed on the Luxembourg Green Exchange, the world's first dedicated and leading platform for green, social and sustainable securities, which was launched in 2016. The Luxembourg Green Exchange has the largest market share of listed green bonds worldwide.

2. Authorisation

2.1 Authorisation to Provide Financing to a Company

According to the Law of 5 April 1993 on the financial sector (LFS), any person granting loans in Luxembourg on a professional basis must hold the licence of a credit institution licence or a professional in the financial sector carrying on lending activities.

Pursuant to Article 28-4 of the LFS, a professional granting loans to the public for their own account (ie, credit institutions) and professionals

of the financial sector performing lending operations (such as financial leasing and factoring operations) fall under the scope of the licence requirements.

The granting of loans could be an activity exempted from licensing requirements, in so far as, among others, loans are not granted to the public (see also **1.1 Impact of Regulatory Environment and Economic Cycles** on the exemptions for licensing requirements set forth in the Q&A).

Entities contemplating carrying on lending activities in Luxembourg should satisfy a certain number of legal requirements as set out in the LFS.

Since November 2014, the ECB has been exclusively competent for the authorisation and qualifying holding approvals of all credit institutions (except for branches of a third-country-based entity), while the authorisation of non-bank entities as well as branches of a third-country-based entity seeking to provide loans in Luxembourg remains within the scope of the CSSF's competences.

Furthermore, the CSSF closely monitors lending activities given that such activities continue to develop outside traditional banking circuits. Hence, lenders contemplating undertaking lending activities in Luxembourg should approach the CSSF by submitting a detailed description of the envisaged activities and obtain clearance from the CSSF.

3. Structuring and Documentation Considerations

3.1 Restrictions on Foreign Lenders Granting Loans

As indicated in **2.1 Authorisation to Provide Financing to a Company**, the granting of loans is, in principle, a regulated activity in Luxembourg that could be provided by duly licensed credit institutions or non-bank entities.

Lenders based within the European Union could grant loans in Luxembourg through the provision of cross-border services, the establishment of a branch or the appointment of a tied agent, provided that they hold an authorisation from the competent authority of their home member state to perform lending activities.

Lenders based in a third country could only grant loans in Luxembourg through the establishment of a branch. Such branch shall be subject to the same authorisation rules as those applying to credit institutions and other professionals governed by the LFS. Furthermore, lenders based in a third country wishing to grant loans without having an establishment in Luxembourg but that occasionally and temporarily come to Luxembourg in order to, among other things, collect deposits and other repayable funds from the public and provide any other regulated service under the LFS are also subject to prior authorisation from the CSSF. However, the CSSF clarified in its Q&A that going to Luxembourg temporarily to carry out an upstream or downstream activity from the above-mentioned activities is not subject to authorisation.

3.2 Restrictions on Foreign Lenders Granting Security

See **3.1 Restrictions on Foreign Lenders Granting Loans** on restrictions on foreign lenders

granting loans. Provided that the foreign lender lawfully grants loans in Luxembourg, there are no specific restrictions relating to the granting of security to secure such loan, to the extent that the security is constituted on a type of asset over which security can be granted.

3.3 Restrictions and Controls on Foreign Currency Exchange

CSSF Circular No 12-538 on lending in foreign currency provides for specific conditions to be observed by credit institutions and professionals performing lending activities when providing loans in a foreign currency.

3.4 Restrictions on the Borrower's Use of Proceeds

Unless otherwise agreed between the borrower and lender, and save for the financing of criminal activities, there are no specific restrictions related to the use of proceeds arising out of a loan or debt instruments.

3.5 Agent and Trust Concepts

The concepts of agent and agency (*mandat*) are governed by the Luxembourg Civil Code.

The Securitisation Law provides for a specific legal framework applying to agents in charge of representing investors' interests. It expressly allows the granting of security interests and guarantees to a (security) agent without the need to use parallel debt provisions in the relevant documentation. The rights and obligations of such agent should be assessed on the basis of the Civil Code provisions governing the agency.

Furthermore, under the Law of 27 July 2003 on trusts and fiduciary agreements, as amended (the "Fiduciary Law"), foreign trusts are recognised in Luxembourg to the extent that they are authorised by the law of the jurisdiction in which they are created.

According to the Fiduciary Law, a Luxembourg fiduciary may enter into a fiduciary agreement with a fiduciant, pursuant to which the fiduciary becomes the owner of a certain pool of assets forming the fiduciary estate, which are, even in an insolvency scenario, segregated from the assets of the fiduciary and held off balance sheet.

3.6 Loan Transfer Mechanisms

Under Luxembourg law, a loan (receivables) can be transferred by the lender through an assignment, subrogation or novation.

Assignment of Receivables

All rights and obligations on the receivables may be assigned by a lender to an assignee pursuant to Articles 1689 et seq of the Luxembourg Civil Code. The assignee will therefore become the legal owner of the receivables so transferred. Such transfer of the receivable should be then notified to the debtor in accordance with Article 1690 of the Luxembourg Civil Code.

Subrogation

Pursuant to Articles 1249 et seq of the Luxembourg Civil Code, receivables may also be transferred by way of contractual subrogation; ie, a third party will pay to the original lender the amount owed by the debtor and will then be subrogated to all rights and actions the original creditor could have exercised against the debtor prior to the payment by the third party.

Novation

Also, pursuant to Articles 1271 et seq of the Luxembourg Civil Code, receivables may be transferred by way of novation; ie, all parties must consent that a new lender will substitute the

original lender and assume its obligations under a new agreement made between the new lender and the debtor.

However, pursuant to Article 1278 of the Luxembourg Civil Code, any security interests (such as privileges or mortgages) attached to a former (extinct) claim lapse by virtue of the novation unless the lender has explicitly reserved them to subsist. In addition, following the general rule provided by Article 1692 of the Luxembourg Civil Code, which applies to accessory security in Luxembourg, the transfer or assignment of receivables includes the transfer of its accessory rights, including any security interests (such as privileges or mortgages).

3.7 Debt Buy-Back

Should the instrument being bought back be a debt instrument listed on a European Union regulated market or a multilateral trading facility, the provisions of, respectively, Regulation (EU) No 596/2014 on market abuse (ie, an assessment should be made on whether such buy-back would constitute price-sensitive information that is likely to be considered as inside information) and rules of the relevant securities exchange on which such debt instrument is listed (if any, such as ensuring equal treatment among bondholders as far as the rights attaching to debt securities held by the latter are concerned) should be observed. Save for the above and unless otherwise contractually agreed between the parties, there are no restrictions applicable to debt buy-backs in Luxembourg.

3.8 Public Acquisition Finance

The Luxembourg legal framework as regards public finance transactions derive from the provisions of the Law of 19 May 2006 on takeover bids, as amended (the "Takeover Bids Law"), transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 (the "Takeover Bids Directive").

The CSSF is the competent authority for supervising takeover bids, provided that the offeree has its registered office in Luxembourg and its securities are publicly traded on a regulated market in Luxembourg.

The procedure to observe while making a public takeover bid derives from the rules set forth in the Takeover Bids Directive and is rather standard throughout the European Union. In a nutshell, the offeror must inform the CSSF of its intention to make a public takeover bid, before disclosing such decision to the public. Subsequently, the offeror must draw up and make public an offer document that will provide information on the takeover offer to the holders of the target company. Such document shall also be communicated to the CSSF for approval within ten working days from the day on which the bid was made public.

4. Tax

4.1 Withholding Tax

Subject to the Law of 23 December 2005 (the "Relibi Law"), as a matter of principle, there is no withholding tax in Luxembourg on payments of principal, interest or other sums made by a borrower to a lender (unless such payment of principal and interest are not at arm's length). As a consequence, payment obligations of borrowers to lenders would be made free of any withholding tax.

However, as per the Relibi Law, payments of interest or similar income made, or ascribed, by a paying agent established in Luxembourg to, or for the benefit of, a Luxembourg resident

individual lender will be subject to a withholding tax of 20%.

If the individual lender acts in the course of the management of their private wealth, the aforementioned 20% withholding tax will operate a full discharge of income tax due on such payments.

4.2 Other Taxes, Duties, Charges or Tax Considerations

No other taxes, duties, charges or tax considerations are imposed on lenders while making or transferring loans to, or taking security or guarantees from, debtors based in Luxembourg, save that the registration of the loan/security/guarantee documentation will be required where such documentation is physically attached to a public deed or to any other document subject to a mandatory registration in Luxembourg. Furthermore, should the taking of security imply the transfer of rights on immovable property located in Luxembourg or aircraft or boats registered in Luxembourg, such transfers would be subject to an ad valorem registration duty.

4.3 Usury Laws

In principle, the interest rate may be freely determined between the parties to a loan agreement and may exceed the legal interest rate. However, if the interest rate is manifestly usury, a Luxembourg court may reduce it to the applicable legal interest rate. In addition, if the borrower is a consumer, information must be provided regarding the effective annual global interest rate (*taux annuel effectif global*) and on the interest amount charged for each instalment of the loan.

5. Guarantees and Security

5.1 Assets and Forms of Security

Under Luxembourg law, credit support can take various forms, from the most traditional forms of contractual undertakings pertaining to civil contract law to a highly lender-friendly financial collateral regime.

Security Governed by the Collateral Law

The Law of 5 August 2005 on financial collateral arrangements, as amended (the "Collateral Law"), provides for various techniques to grant security in guarantee for financial debts; namely, pledges, transfers of title for security purposes (including by way of fiduciary transfer) and repurchase agreements. The collateral under these arrangements can take the form of any "financial instruments and claims". A variety of assets may consequently be used as financial collateral. Typically, collateral will take the form of shares of a company, bonds, intercompany receivables, bank accounts and securities accounts, without prejudice to more unusual sorts of collateral such as insurance receivables and the capital calls and commitments of the investors in a fund.

On 7 July 2022, the Luxembourg Parliament enacted a draft bill amending, among other things, certain provisions of the Collateral Law with the aim of modernising and clarifying, among other things, the enforcement regime of securities granted thereunder.

Security Governed by the Civil Code and Special Laws

The in rem securities under civil law may also be granted, such as commercial pledges, inventory pledges and mortgages over real estate properties. Other types of securities – such as (i) mortgages over aircraft, governed by the Law of 29

March 1978, and (ii) a general pledge over ongoing business concerns governed by the Grand Ducal decree of 27 May 1937, as amended (the "1937 GDD") – are also available under Luxembourg law.

The Civil Code provides an entire regime for suretyships (*cautionnements*), but also recognises the enforceability of other personal securities, such as autonomous guarantees, comfort letters and other sui generis personal undertakings.

In addition, the Law of 17 July 2020 on professional payment guarantee (the "PPG Law") introduced a new form of flexible professional payment guarantee, which may be adapted to the specific transaction, with the provisions agreed by the parties receiving full recognition under Luxembourg law, without risk of recharacterisation.

More specifically, the PPG Law introduces a new legal form of guarantee, going beyond the traditional distinction between suretyship and first-demand guarantee, whereby the former constitutes an accessory obligation, the existence and enforceability of which depends on the status of the underlying guaranteed obligation and the latter creates an obligation to the guarantor that is independent from the underlying secured obligation. The PPG Law introduces an optional (opt-in) contractual guarantee regime that allows the parties to structure their contract by combining features of the existing guarantee types, without them facing the risk of recharacterisation. More specifically, unless otherwise agreed by the parties, the professional payment guarantee can be enforced irrespective of the default of the underlying obligation. In that sense, the guarantor cannot raise any defence related to the underlying obligation to the creditor. On top of that, the insolvency of the debtor or the commencement of a reorganisation plan will not affect the obligations of the guarantor. At the same time, unless otherwise agreed, the guarantor will be subrogated to the rights and obligations of the creditor, after the repayment of the guarantee.

Finally, under the PPG Law, it is possible to grant a guarantee in favour of an intermediary that acts for the benefit of the creditor. The application of the PPG Law requires that the guarantor provides guarantees on a professional basis, that the parties explicitly opt in to the PPG Law and that the agreement is evidenced in writing.

Formalities and Perfection Requirements for a Security Governed by the Collateral Law

Pledges over financial instruments and claims require that the pledgor must be dispossessed with respect to the pledged assets, which is typically achieved as follows.

- Through a pledge over (i) the shares of a private limited liability company, by the mere conclusion of the pledge agreement between the pledgor and the pledgee in the presence of the company that issued the pledged shares and its registration in the shareholders' register of the said company, and (ii) the shares of a public limited liability company following its registration in the shareholders' register of the company that issued the pledged shares.
- Through a pledge over a bank account, upon its notification or acceptance by the bank with which the pledged bank account is maintained. It is a prerequisite to the creation of the pledge over a bank account that the bank maintaining the pledged bank account accepts to waive its general rights of pledge, lien, set-off or retention in respect of the rel-

evant bank account usually contained in the bank's general terms and conditions.
- Through a pledge over receivables, upon the mere conclusion of the pledge agreement. However, the debtor of the pledged receivables will be discharged while making payments to the pledgor unless it has been notified of the existence of the pledge over the receivables to the benefit of the pledgee.

With respect to a transfer of title by way of security, the pledgee transfers the ownership in relation to the receivables to the beneficiary until the secured obligations have been discharged, triggering the obligation of the beneficiary to retransfer the receivables to the pledgor. The transfer of title by way of security will be perfected against the debtor and third parties upon its execution by the pledgor and the beneficiary. However, the debtor of the transferred receivables will be discharged while making payments to the pledgor unless the debtor has been notified of the existence of the transfer of title over the receivables to the benefit of the pledgee.

Security Governed by the Civil Code and Other Special Laws

The creation of a security right over immovable property or aircraft requires the realisation of a number of formal requirements. The security right can be created only through a notarial deed, which has to be registered with the tax administration and relevant publicly held mortgage register. Meeting those formalities is costly and might take time.

Equally formal and expensive is the creation of a security right over ongoing business concerns, which has to be witnessed in a written contract and registered in a mortgage registry. The collateral will comprise all the tangible and intangible assets of a business as well as half of its outstanding shares.

Guarantees

Guarantees and suretyships are perfected by the mere conclusion of the relevant agreement creating such security.

5.2 Floating Charges or Other Universal or Similar Security Interests

The creation of a floating charge interest over the assets of a company is not possible under Luxembourg law, pursuant to the Luxembourg law principle of prohibition to secure future or after-acquire assets. The Luxembourg law concept that is closest to a floating charge is the pledge over ongoing business concerns referred to in **5.1 Assets and Forms of Security**.

In addition, the Collateral Law provides for the possibility to create securities over all financial instruments of a pledgor, even those that will be acquired in the future. Hence, it is common that borrowers grant to their lenders a security package comprising pledges on certain financial instruments and claims held by such borrowers and governed by the Collateral Law. The perfection of pledges will depend on the type of the collateral, as described in **5.1 Assets and Forms of Security**.

Furthermore, under Luxembourg law, security interests with respect to future assets are, in principle, considered as a promise to pledge (*promesse de gage*), to deliver the future assets and to create in the future the security interest as long as the assets are not in possession of the pledgee of the third-party holder. As an exception to the Luxembourg law principle of prohibition to secure future or after-acquire assets, it is possible to agree (by way of contract) to pledge future or after-acquired assets once they have

entered into the ownership of the pledgor and are transferred into the possession of the pledgee or a third-party holder pursuant to a pledge agreement.

5.3 Downstream, Upstream and Cross-Stream Guarantees

As a general rule, all transactions of a company (including the provision of guarantees or security) must comply with the company's corporate object as set forth in its articles of association and be in the interest of the company. The latter concept means that a company may not engage in transactions that, though lawful, are aimed at conferring exclusive or substantially exclusive benefits on a person other than the company itself.

This condition is generally met in the event that a company provides collateral to secure its own indebtedness. It is also clearly fulfilled in all instances where a company gives collateral to secure the indebtedness of third parties or other group companies in exchange for an arm's-length consideration.

The above condition is also met if the company is providing an exclusive downstream guarantee since one would assume that such a guarantee is helpful for the subsidiary of the relevant company to obtain credit and that will enhance the business of the subsidiary, which, in turn, will result in an increased value of the shareholding of its parent company.

Finally, the condition is also met if the guarantor derives an indirect benefit such as the possibility to borrow, under favourable conditions from the bank taking the relevant security, or in cases where the secured loan (or part thereof) is on-lent by the other group company to the company providing the collateral. Guarantees to secure loans to other group companies or to the parent also meet the "corporate interest" condition if these guarantees are necessary for the continuing operations of the relevant company and if the guarantor heavily depends on those operations.

Upstream and Cross-Stream Guarantees

There is no Luxembourg legislation governing group companies that specifically regulates the organisation and liability of groups of companies. As a consequence, the concept of group interest as opposed to the interest of the individual corporate entity is not expressly recognised in Luxembourg. Hence, a company may, in principle, not encumber its assets or provide guarantees in favour of group companies in general (at least as far as parent companies and subsidiaries of its parent companies are concerned) unless the said Luxembourg company assists other group companies.

In practice, upstream or cross-stream guarantees are limited to a certain percentage of the guarantors' net assets.

If there is a finding by a court that financial assistance such as the giving of a guarantee is not showing a sufficient benefit to the company, its managers may be held liable for action taken in that context. Furthermore, under certain circumstances, the managers of the latter company may incur criminal penalties based on the concept of misappropriation of corporate assets (Article 1500-1 of the Luxembourg Companies Law). Ultimately, it cannot be excluded that if the relevant transaction were to be considered as a misappropriation by a Luxembourg court or if it could be evidenced that the other parties to the transactions were aware of the fact that the transaction was not for the company's corporate benefit, the transaction might be declared void

based on the concept of illegal cause (*cause illicite*).

5.4 Restrictions on Target

As a general rule, companies that are an acquisition target are prohibited from financing the buyout of their shares. It is, though, possible for a public limited liability company, under certain conditions as provided for in the Companies Law, to directly or indirectly advance funds, grant loans or provide guarantees or security with a view to the acquisition of its own shares by a third party. If the requirements of the Companies Law are not met, the directors of the company may face civil or criminal liability.

The question of whether criminal sanctions provided under Article 1500-7 paragraph 2 of the Companies Law apply to managers of a private limited liability company or not, has been controversial until recently, mainly due to the use of the term "corporate units" in said article. This controversy has been clarified with the entry into force of the Law of 16 August 2021 which amended the provision of Article 1500-7 paragraph 2 of the Companies Law. The Companies Law makes no reference to the term "corporate units" and hence criminal sanctions provided under the said article do not apply to managers of a private limited liability company. Financial assistance is therefore not prohibited for private limited liability companies.

5.5 Other Restrictions

There are no material restrictions save for those described in **5.2 Floating Charges or Other Universal or Similar Security Interests** (notification formalities required for the perfection of pledges over receivables, bank accounts and the shares of a private limited liability company) and **5.3 Downstream, Upstream and Cross-Stream Guarantees**.

5.6 Release of Typical Forms of Security

A security, it being a pledge or a mortgage, is released once the secured obligation is fully discharged (Articles 2082 and 2180 of the Civil Code) or as provided for in the security agreement. Despite such explicit provision of the Civil Code and for the sake of good order, the parties of a security agreement usually sign a release agreement, which asserts that either the secured obligations under the security arrangement have been paid in full and that the collateral is to be released or the security taker consents to release the pledgor from its obligations under the collateral.

5.7 Rules Governing the Priority of Competing Security Interests

As a general principle, contractually secured creditors enjoy a privilege over the assets of the debtor that is restricted on the encumbered asset.

With respect to a security interest created pursuant to the Collateral Law, unless otherwise agreed, the first priority pledgee is entitled to receive any proceeds arising out of the enforcement of the security interest.

As regards a security interest (which creates a right in rem), priority of pledges is determined by the date on which they became enforceable against third parties; ie, on a first-to-file basis in the relevant register (eg, mortgage register, register of shareholders).

In practice, priority rules of competing creditors are usually contractually adapted through entering into an intercreditor agreement; for instance, between creditors that should provide and govern the subordination among creditors as per their respective rights over the security interest. Hence, in the case of enforcement of the security

interest, lower-ranked creditors will be subordinated in rank, priority and enforcement to upper-ranked creditors, subject to the provisions of the intercreditor agreement, if any.

Even though there are no general Luxembourg law provisions on contractual subordination, there is evidence of limited Luxembourg case law supporting the validity of special subordination clauses against the bankruptcy receiver of an insolvent borrower.

6. Enforcement

6.1 Enforcement of Collateral by Secured Lenders

A typical loan security package in Luxembourg includes security interests governed by the Collateral Law and guarantees, the enforcement of which could be made as follows.

Security Governed by the Collateral Law

The pledgee can, upon the occurrence of the contractual trigger event (which may be a default under the secured obligations – see **5.1 Assets and Forms of Security**) and without prior notice, inter alia:

- appropriate the security or have it appropriated by a third party at market price (if any), unless otherwise agreed;
- sell or cause the security to be sold in a private transaction under arm's-length conditions, by a public sale or by way of an auction;
- request a court that title to the security be transferred to it as payment of the secured obligations;
- appropriate the security at its market price if traded on a trading venue being defined in the Collateral Law as a regulated market, multilateral trading system, or organised trading facility system; or
- otherwise enforce the security in any other manner permitted by Luxembourg laws, including, if applicable, by requesting a set-off or direct payment.

The last amendment of the Collateral Law introduced an alternative method of enforcement with respect to the appropriation of units or shares of a collective investment undertaking, whereby a pledgee can redeem them at the redemption rate indicated in the instruments of incorporation of this undertaking.

Another amendment included in the Law relates to the public auction procedure for the enforcement of pledges, which can now be carried out by a notary or bailiff, designated as auctioneer by the creditor. The Collateral Law now also delineates the auction procedure, the designation of the pledged assets to be sold, the methods of publication and the deadlines.

Enforcement of Guarantees

Due to the independent nature of a guarantee, the calling of it could be made as contractually agreed between the parties (even in the absence of a default or the occurrence of the risk guaranteed). However, certain contractually agreed conditions might be observed by the beneficiary before proceeding to the calling of a guarantee.

6.2 Foreign Law and Jurisdiction

Under Luxembourg laws, parties to an agreement can freely choose the law governing such agreement and submission to a foreign jurisdiction, subject to such choice not being abusive. Hence, the choice of foreign law as the governing law of the contract will – in accordance with, and subject to, the provisions of Regulation (EC) No 593/2008 of 17 June 2008 on the law appli-

cable to contractual obligations – be recognised and upheld by Luxembourg courts, unless the chosen foreign law were not made bona fide and/or if:

- the foreign law were not pleaded and proved; or
- if pleaded and proved, such foreign law would be contrary to the mandatory rules of Luxembourg law or manifestly incompatible with Luxembourg international public policy.

The submission by the parties to the jurisdiction of foreign courts would be upheld by the Luxembourg courts, with the exceptions provided for in **6.3 A Judgment Given by a Foreign Court**.

6.3 A Judgment Given by a Foreign Court

Judgment Given by a Foreign Court

A final and conclusive judgment rendered by the following courts would be enforced by Luxembourg courts without a retrial or re-examination of the matters thereby adjudicated, save for the examination of the compliance of such judgment with Luxembourg public order:

- European Union-located courts, in accordance with applicable enforcement proceedings as provided for in Regulation (EU) No 1215/2012 (the "Brussels Regulation"); and
- European Free Trade Association (EFTA)-located courts, in accordance with applicable enforcement proceedings as provided for in the Lugano convention of 30 October 2007 (the "Lugano Convention").

A final and conclusive judgment rendered by the below-mentioned courts would be enforced by Luxembourg courts as follows:

- England and Wales courts subject to (i) the provisions of the Convention of 30 June 2005 on choice of court agreements (the "Hague Convention"), (ii) the exequatur procedure as set out in Article 678 of the Luxembourg New Civil Procedure Code and (iii) established Luxembourg case law in respect of the enforcement of foreign law judgments; and
- a non-EU- or non-EFTA-located court, subject to (i) the applicable exequatur procedure as set out in Article 678 of the Luxembourg New Civil Procedure Code and (ii) established Luxembourg case law in respect of the enforcement of foreign law judgments.

Arbitral Award

An arbitral award may be enforced in Luxembourg provided that all the requirements of the enforcement procedure set out in Articles 1250 and 1251 of the Luxembourg New Civil Procedure Code have been satisfied.

6.4 A Foreign Lender's Ability to Enforce Its Rights

Other than those mentioned in **6.1 Enforcement of Collateral by Secured Lenders** to **6.3 A Judgment Given by a Foreign Court**, there are no other matters that might impact a foreign lender's ability to enforce its rights under a loan or security agreement in Luxembourg.

7. Bankruptcy and Insolvency

7.1 Company Rescue or Reorganisation Procedures Outside of Insolvency

Under Luxembourg law, the following types of reorganisation procedures outside of insolvency proceedings are available for a company, provided that its centre of main interests for the purpose of Regulation (EU) 2015/848 (the "Insolven-

cy Regulation") and central administration are located in Luxembourg.

Controlled Management

A company can apply for the regime of controlled management in the event that it loses its commercial creditworthiness or ceases to be in a position to fulfil its obligations, in order (i) to restructure its business or (ii) to realise its assets in good condition. An application for controlled management can only be made by the company itself. It requires that the company has not been declared bankrupt by the Luxembourg courts and is acting in good faith. Controlled management proceedings are rarely used as they are not often successful and generally lead to bankruptcy proceedings.

Preventative Composition Proceedings

A company may enter into preventative composition proceedings in order to resolve its financial difficulties by entering into an agreement with its creditors, the purpose of which is to avoid its bankruptcy.

Preventative composition proceedings may only be applied for by a company that is in financial difficulty. Similar to controlled management proceedings, the preventative composition proceedings are not available if the company has already been declared bankrupt by the Commercial District Court or if the company is acting in bad faith. The application for the preventative composition proceedings can only be made by the company and must be supported by proposals of preventative composition.

Reprieve from Payment Proceedings

A reprieve from payments of a commercial company can only be applied to a company that, because of extraordinary and unforeseeable events, has to temporarily cease its payments but that has, on the basis of its balance sheet, sufficient assets to pay all amounts due to its creditors. The reprieve from payments may also be granted if the situation of the applicant, even though showing a loss, presents serious elements of re-establishment of the balance between its assets and its debts.

The purpose of the reprieve from payments proceedings is to allow a business undertaking experiencing financial difficulties to suspend its payments for a limited time after a complex proceeding involving both the Commercial District Court and the *Cour supérieure de justice* and the approval by a majority of the creditors representing, by their claims, three quarters of the company's debts (excluding claims secured by privilege, mortgage or pledge).

The suspension of payments is, however, not for general application. It only applies to those liabilities that have been assumed by the debtor prior to obtaining the suspension of payment and has no effect as far as taxes and other public charges or secured claims (by right of privilege, a mortgage or a pledge) are concerned.

7.2 Impact of Insolvency Processes

The declaration of a Luxembourg company as insolvent results in the implementation of a moratorium/automatic stay that prevents all unsecured creditors of the insolvent company from taking any enforcement actions against the company's assets. In that sense, common creditors are obliged to wait for the completion of the procedure and the allocation of the assets on a pari passu basis.

On the other hand, secured creditors and especially those benefiting from a security governed by the Collateral Law are exempted from the automatic stay (safe harbour) and, hence, can

enforce their rights upon the occurrence of a trigger event (as contractually agreed between the parties), irrespective of any insolvency proceeding being initiated at the level of the collateral grantor.

Bankruptcy remoteness is an essential feature of the Collateral Law that further extends such insolvency safe harbour to financial collateral arrangements governed by laws other than those of Luxembourg, provided that the security provider is established in Luxembourg. To benefit from this additional safe harbour, the foreign-law-governed security agreements should be "similar" to the Collateral Law, with a similar scope of financial instruments and/or claims within the meaning of the Collateral Law.

The insolvency of the borrower does not have any impact on guarantees issued by third parties.

7.3 The Order Creditors Are Paid on Insolvency

The order of priority payments on a company's insolvency is, pursuant to the Civil Code, as follows:

- creditors of the bankrupt estate (including the court's and bankruptcy administrator's costs and fees);
- preferred creditors;
- ordinary unsecured creditors; and
- shareholders, who are treated as subordinated creditors and receive any surplus from the liquidation, if any, in proportion to their shareholding.

If the company's assets are not sufficient to pay the preferred creditors with a general preferential right, the claims of these creditors take preference over the other creditors (including creditors with a special preferential right or with a mortgage).

Creditors benefiting from a security governed by the Collateral Law are out of the scope of the above-listed order, as further explained in **5.1 Assets and Forms of Security**.

7.4 Concept of Equitable Subordination

The concept of equitable subordination does not exist under Luxembourg law.

7.5 Risk Areas for Lenders

A lender might incur certain risks related to the recovering of its rights against a security provider or a guarantor becoming insolvent. The transaction with the security provider or guarantor that has become insolvent may be challenged by the appointed insolvency administrator. A conjectural cancellation could have one of the following legal consequences. If the transaction with the lender took place during the pre-bankruptcy suspect period (which is a period of six months and ten days preceding the opening of insolvency proceedings against the given security provider/guarantor), the court could, in theory, invalidate the transaction if it is proved that the transaction took place while the parties were aware of the coming insolvency of the debtor. It is also possible that a creditor of the debtor might file an actio pauliana, to challenge transactions that took place prior to the insolvency, irrespective of the suspicious period, if the creditor can prove that it incurred damage, associated with the reduction of the estate of the insolvent debtor, and that the transaction took place in bad faith and on purpose to damage the creditor.

The above-mentioned risks do not affect security rights obtained under the provisions of the Collateral Law.

8. Project Finance

8.1 Introduction to Project Finance

Project finance could be described as a technique for the design, financing, construction, management and exploitation of large infrastructure projects involving a promoter that sponsors and implements the financed project. The given project is typically financed through a legally and financially standalone project company (a special purpose vehicle) with the promoter(s) being a strategic partner.

Generally, there is no specific legal framework governing project finance in Luxembourg. A financing may, however, be subject to a specific legal regime depending on the industry to which a given financed project would belong. Despite the foregoing, the European Investment Bank (EIB) – being the biggest multilateral financial institution in the world and one of the largest providers of project finance, and having its headquarters in Luxembourg – and, more recently, the largest Chinese banks, which have set up their European hubs in Luxembourg, mainly focus on private sector and vital infrastructure development around the world, with a solid track record of financing a variety of (infrastructure) projects focused on climate and the environment, development, innovation and skills, small and medium-sized businesses, infrastructure and cohesion.

8.2 Overview of Public-Private Partnership Transactions

The concept of public-private partnership (PPP) commonly refers to the use of private finance for infrastructure procurement and public service provision. Save for rules deriving from, among others, the Law of 8 April 2018 on public procurement, as amended, the Law of 3 July 2018 on concession contracts, building permits, environmental and health laws that should be taken into account in PPP transactions, there are neither specific rules nor restrictions applicable to PPPs in Luxembourg.

8.3 Government Approvals, Taxes, Fees or Other Charges

As a major financial centre, Luxembourg is used as a hub for many companies acting in a variety of industries across the globe. Most of the funding operations conducted through Luxembourg special-purpose vehicles are used for the financing of specific projects around the world.

See **4.2 Other Taxes, Duties, Charges or Tax Considerations** on the absence of taxes and similar duties in the context of project finance transactions in general. However, specific procedures apply to public procurement contracts, in which the bidder is required to submit a financial and technical plan in its proposal lodged within a set timeline, and on the basis of which the contracting (public) authority will select its preferred bidder. The format and content of tender documents are governed by the Law of 8 April 2018 on public procurement, as amended.

8.4 The Responsible Government Body

Luxembourg is an international financial centre with a financial services-oriented economy and has no fossil fuels (such as oil and gas) or mining industry. However – since 2017 and the adoption of the Law of 20 July 2017 on the exploration and use of space resources laying down the regulations for the authorisation and the supervision of private space exploration missions, including both exploration and utilisation of space resource – Luxembourg is the first European country, and the second worldwide, with a legal framework applicable to the exploration and use of space resources. The authorisation and supervision of space activities fall within

the competences of the Ministry of the Economy and the Luxembourg Space Agency (powered by the Ministry of the Economy with the aim to, among others, implement the national space economic development strategy and policy).

8.5 The Main Issues When Structuring Deals

The main issues that should be considered when structuring a deal would strongly depend on the nature of and potential risks associated with the financed project and the involved parties.

8.6 Typical Financing Sources and Structures for Project Financings

In Luxembourg, notwithstanding the particularities of the financed project, typical financing sources are through (i) credit facilities provided by credit institutions or (alternative credit providers) or (ii) the issuance of debt instruments to be placed with investors.

8.7 The Acquisition and Export of Natural Resources

There are no specific restrictions on exporting natural resources; however, environmental, health and safety laws could impose burdens on the parties to a transaction.

8.8 Environmental, Health and Safety Laws

Legal provisions concerning environmental, health and safety issues are codified in the Luxembourg Environmental Code. Those fields are supervised by, respectively, the Ministry of the Environment, Climate and Sustainable Development (with respect to environment-related matters) and the Ministry of Health (with respect to health and safety-related matters).

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