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Luxembourg: Law and Practice

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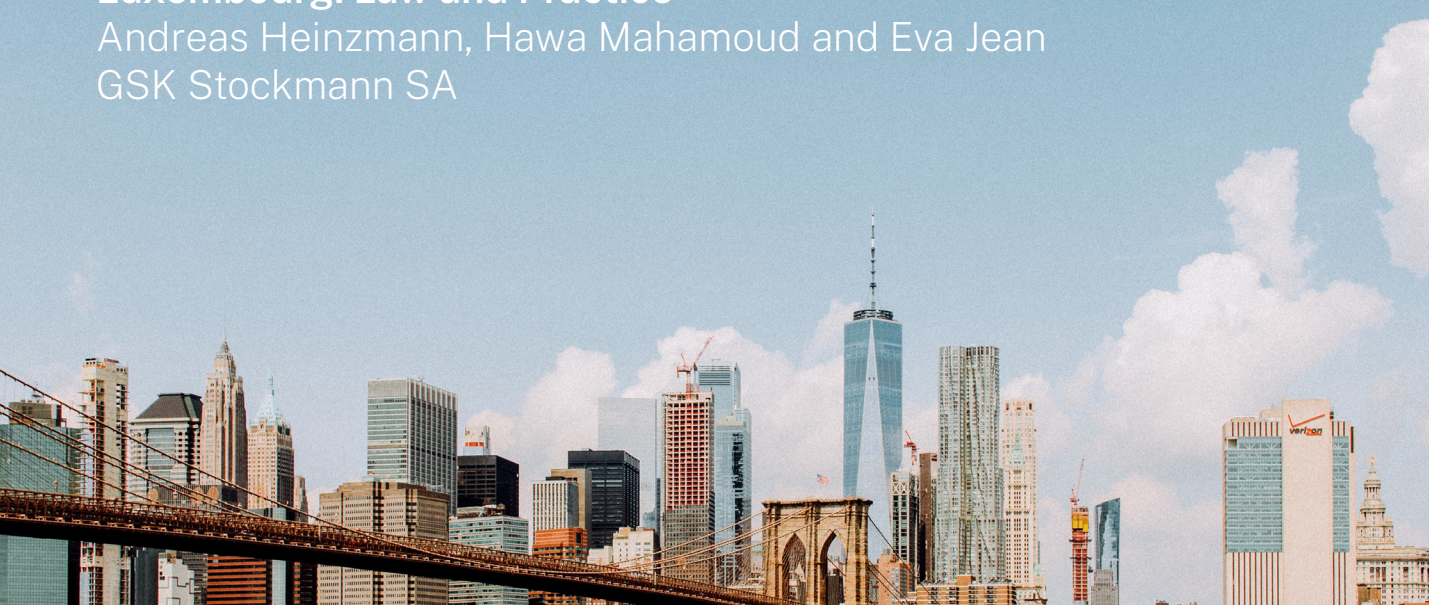
GSK Stockmann SA



LUXEMBOURG

Law and Practice

Contributed by:
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1. Loan Market Overview

1.1 The Regulatory Environment and Economic Background

Luxembourg's economy has been strong and steadily expanding over recent years. Despite global and regional challenges, it continues to demonstrate remarkable resilience and adaptability. Prior to 2020, the real economy was booming and the business and credit cycle was moving upwards. The COVID-19 health crisis only squeezed the real economy by 1.3% in 2020, and it bounced back robustly, rising by by 5.1% in 2021. Despite a 1.1% contraction in real GDP in 2023, mainly due to declines in net exports and investments, private consumption accelerated strongly and is projected to continue expanding in 2024, resulting in GDP growth of 1.4%. In 2025, with anticipated declines in interest rates and an improvement in economic activity both within the euro area and in the EU's external environment, a recovery in investment is projected to drive the real GDP to accelerate to 2.3%.

Although the government deficit is increasing, it is backed by a general increase in spending. Luxembourg's debt-to-GDP ratio is set to increase but remain at an overall low level. The interest rate rises implemented by the ECB in response to the unprecedented high inflation within the Eurozone, together with ongoing geopolitical uncertainty, have adversely affected investments due to higher borrowing costs. According to market data released by the ECB on 25 July 2024, after experiencing its first contraction since 2010 in 2023, the Eurozone money supply is gradually recovering to the levels observed prior to the decline.

Luxembourg remains a major international financial centre, with a booming asset management industry (with a total of EUR5.2 trillion of assets under management as of January 2024, representing more than 25% of the EU market in 2023) and a sound banking system, with 117 authorised banks in operation (as of June 2024). Luxembourg's financial centre continues to attract financial institutions and investors from across the world.

1.2 Impact of Global Conflicts

Luxembourg professionals of the financial sector, which is subject to the supervision of the Commission de Surveillance du Secteur Financier (CSSF), have been obliged to implement and comply with the financial restrictive measures adopted by the European Union in response to

Russia's invasion of Ukraine. Accordingly, Luxembourg has reportedly frozen EUR5.5 billion of Russian assets (as of December 2022), including bank accounts and transferable securities. As a result, Luxembourg banks have been reducing their exposure to Russia and Ukraine in an attempt to limit the impact of the decline in the market valuation of their assets. In addition, in the realm of debt capital markets, issuers have amended the terms of issue documentation to account for the potential risks arising from geopolitical instability in the markets where they operate. These adjustments are designed to refine the assessment of market risks linked to securities, given the uncertain regional macroeconomic conditions.

At the same time, the geopolitical instability seems to have exerted only a marginal influence on Luxembourg's investment-fund sector, which has shown resilience amid the financial market disruptions. According to market data for Q1 2024, debt securities and loans of non-financial corporations and the private non-financial sector have remained relatively stable since Q1 2022. Similarly, as of Q1 2024, debt securities issued by local corporations have also remained stable.

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 holds a market share of 34% in terms of international bonds listed worldwide, according to figures disclosed in January 2024. 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.

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

Furthermore, large European institutions like the European Investment Bank (EIB), the European Investment Fund (EIF) and the European Stability Mechanism (ESM) have opted for Luxembourg law as the governing law of their instruments. The EIB chose Luxembourg law to govern its digital bond, whereas guarantees provided by the EIF are typically governed by Luxembourg Law. Additionally, since October 2020, the European Stability Mechanism chose Luxembourg law as the governing law for the issue of its euro-denominated bonds. This trend is viewed as a significant endorsement of the Luxembourg legal framework and is likely to reassure a wide range of issuers, including supranational debt issuers, who frequently use LuxSE as a listing venue for sovereign bonds. It encourages a shift away from foreign jurisdictions towards Luxembourg law for the issue of debt instruments admitted to trading and/or listed on LuXSE.

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 CSSF, as further detailed in **2.1 Providing Financing to a Company**.

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

1.5 Banking and Finance Techniques

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

1.6 ESG/Sustainability-Linked 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. The world's first legal framework for green-covered bonds was established in Luxembourg in 2018, and further plans to amplify Luxembourg's role as a sustainable finance hub were confirmed in April 2024 through a 10-point action plan powered by the government, which 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.

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 the 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 other environmental objectives.

Regulation (EU) 2023/2631 of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (the "Green Bonds Regulation") shall apply to issuers from 21 December 2024. The Green Bonds Regulation lays the foundation for a common framework of rules regarding the use of the designation "European green bond" or "EuGB" for bonds that pursue environmentally sustainable objectives within the meaning of the Taxonomy Regulation. Issuers must state that the bond is a EuGB in a compliant prospectus approved by a national competent authority (eg, CSSF in Luxembourg). The Green Bonds Regulation also sets up a system for registering and supervising companies that act as external reviewers for green bonds. It will facilitate further the market for high-quality green bonds, thereby contributing to the Capital Markets Union, while minimising disruption to existing green bond markets and reducing the risk of greenwashing.

The Green Bonds Regulation also contains special conditions for securitisation bonds, with the general requirements of the Regulation slightly modified, taking into account the structural characteristics of securitisations. In contrast to corporate bonds, the purpose of a securitisation bond is not to provide liquidity at issuer level, but at the level of the originator, who is not the issuer of the bond. The Green Bonds Regulation focuses on the originator's use of the proceeds from the bond issue. As there are currently still very few risk exposures that can be securitised and are aligned with the Taxonomy Regulation, the Green Bonds Regulation only excludes certain risk exposures, rather than requiring the securitisation of a minimum share of green receivables. For the time being, a regular review and potential expansion of the scope of application of the Regulation are planned, rather than establishing a separate legal framework for sustainable securitisation.

Additionally, on 9 February 2024, the Council and European Parliament reached a provisional agreement on a new regulation governing ESG rating activities. The regulation seeks to enhance investor confidence in sustainable products by ensuring greater transparency, reliability, and comparability of ESG ratings, which assess the sustainability profile of companies and financial instruments. Under the new rules, ESG rating providers will be subject to authorisation and supervision by ESMA, with strict requirements on methodology transparency and conflict of interest management. Providers based outside the EU wishing to operate within the EU will need to secure an endorsement or recognition by an EU-authorised provider.

With regard to local initiatives, the Luxembourg government, in co-operation with the private sector, founded in 2020 the Luxembourg Sus-

tainable 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 to integrate sustainability by collecting and analysing data on the Luxembourg financial industry. Through this initiative, the Luxembourg government has sent yet another strong signal of the country'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 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. In February 2024, the value of outstanding green, social, sustainability and sustainability-linked (GSSS) bonds on the platform amounted to EUR1 trillion.

Moreover, the House of Sustainability in Luxembourg was officially created in 2023 at the initiative of the Luxembourg Chamber of Commerce and the Chamber of Skilled Trades, in partnership with the National Institute for Sustainable Development and Corporate Social Responsibility (INDR). Its objective is to serve as a one-stop shop for companies seeking comprehensive support in their sustainable development efforts.

In March 2024, the CSSF released an update of its supervisory priorities in the area of sustainable finance, which are aimed at enhancing further sustainability practices with a focus on ESG integration.

2. Authorisation

2.1 Providing Financing to a Company

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

Pursuant to Article 28-4 of the LFS, professionals granting loans to the public for their own account 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. In its frequently asked questions, updated on 15 June 2021, the CSSF provided some guidance on the reference to the "public" as used in Article 28-4 of the LFS. The CSSF considers that, where loans are granted to a limited circle of previously determined persons, they are not granted to the public. Moreover, the CSSF considers that a credit activity is not aimed at the public within the meaning of Article 28-4 of the LFS, where: (i) the nominal value of the loan amounts to EUR3 million at least (or the equivalent amount in another currency); and (ii)

the loans are granted exclusively to professionals such as defined in Article L. 010-1.2) of the Consumer Code.

Entities looking to engage in lending activities in Luxembourg need to satisfy a 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 remit of the CSSF.

Furthermore, the CSSF closely monitors lending activities given that such activities continue to develop outside traditional banking circuits. As such, lenders looking to engage in 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

3.1 Restrictions on Foreign Lenders Providing Loans

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

Lenders based within the European Union can 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 ECB or the competent authority of their home member state, as the case may be, to perform lending activities.

Lenders based in a third country can 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, third country-based lenders wishing to grant loans without having an establishment in Luxembourg but that occasionally and temporarily come to Luxembourg in order to, among others, 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 Receiving 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, implementing the recommendation of the European Systemic Risk Board of 21 September 2011 on lending in foreign currencies (ESRB/2011/1), provides for specific conditions to be observed by credit institutions and profes-

sionals performing lending activities when providing loans in a foreign currency. The provisions of the Circular aim, among others, to enforce the risk awareness of borrowers in a foreign currency, highlight the creditworthiness of the borrowers as a condition to be analysed by credit institutions and indicate to credit institutions the need for incorporating into their internal risk management systems the specific risks entailed in foreign currency lending.

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 fiduciary, 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, loans (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 then be 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 Buyback

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.

The issuer of instruments may also elect to initiate a tender offer addressed to the holders of instruments offering to purchase back all or part of its outstanding debt under specific conditions. Such tender offer is documented in a tender offer memorandum which sets out the terms and conditions of the tender offer and which delineates the period of time for investors to respond. In the case of an issuer of debt instruments admitted to trading on a regulated market who has chosen Luxembourg as its home member state, the provisions of the Law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (the "Transparency Law") will be applicable with respect to the manner of communicating the terms of the tender offer to investors.

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 derives 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.

3.9 Recent Legal and Commercial Developments

Blockchain III Law

The Luxembourg law of 15 March 2023 implementing Regulation (EU) 2022/858 of 30 May 2022 on a pilot scheme for market infrastructures based on distributed ledger technology (the "DLT Pilot Regime") was published in the Luxembourg official journal (Mémorial A) on 17 March 2023 (the "Blockchain III Law"). The Blockchain III Law's main goals are to explicitly acknowledge distributed ledger technology (DLT) in the financial industry and to provide financial market participants with complete legal certainty so they may fully capitalise on the potential presented by this new technology. The Blockchain III Law amends several laws relating to the financial sector.

The FSL was amended to clarify that the definition of "financial instrument" also includes financial instruments issued by means of DLT as defined in article 2(1) of the DLT Pilot Regime. Following the amendments introduced by the Blockchain III Law, the Collateral Law (as defined below) clarifies that under its scope fall pledges on securities accounts maintained within or through secured electronic registration mechanisms, including distributed ledgers or electronic databases. It is now confirmed that the validity and perfection of a collateral created under the Collateral Law will not be affected by the technical means by which the pledged security is created or held.

The provisions of this law complete and complement the provisions of the Luxembourg law of 1 March 2019 and of the law of 22 January 2021 which created a legal framework explicitly recognising the possibility of using distributed ledger technology for the issuance and circulation of securities as well as the custody of book-entry financial instruments.

Blockchain IV Bill Proposal

On 24 July 2024, the Ministry of Finance proposed Blockchain Bill IV, amending the Law of 6 April 2013 on dematerialised securities, the Law of 5 April 1993 on the financial sector and the Law of 23 December 1998 establishing a financial sector supervisory commission. It will broaden the existing legal framework regarding distributed ledger technology (DLT) to include equity securities alongside debt securities. A key innovation is the introduction of a control agent, an EU investment firm or credit institution selected by the issuer, which will maintain the securities issuance account, verify consistency between issued and registered securities on the DLT network, and supervise the securities custody chain at the account holder and investor levels. The bill is set to simplify the issuance and reconciliation of dematerialised securities by enabling direct crediting of securities to investor accounts. It is in line with the Government's objective of strengthening the attractiveness and competitiveness of the financial centre by creating a welcoming legal framework for digital securities, offering greater flexibility, security and transparency to issuers and investors.

Reorganisation Proceedings

On 1 November 2023, the Luxembourg law of 7 August 2023 on business preservation and modernisation of bankruptcy law (the "Reorganisation Law") entered into force, in view of the provisions of the 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.

The novelties introduced by the Reorganisation Law are presented in further detail in **7.4 Rescue or Reorganisation Procedures Other Than Insolvency**.

3.10 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 accordance with the Civil Code, interest charged on a loan can be usurious if it is clearly disproportionate to the market interest rate, and the weakness, predicament or inexperience of a borrower is exploited. 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.

3.11 Disclosure Requirements

Save for specific rules imposed by the LFS on group financial support agreements, which regulate the provision of financial support from one party to another in the event that at least one of the parties to the agreement fulfils the conditions for early intervention, there is generally no obligation to disclosure financial contracts in Luxembourg.

Issuers of financial instruments offered to the public, and/or admitted to trading to a regulated market, being subject to the Prospectus Regulation, are obliged to disclose material contracts. More specifically, the Prospectus Regulation requires that a brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business, which could result in any group member being under an obligation or an entitlement that is material to the issuer's ability to meet its obligations to security holders in respect of the securities being issued, should be included in the body of the prospectus.

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 Foreign Lenders or Non-money Centre Bank Lenders

There are no particular tax concerns with regard to foreign lenders and non-money centre banks. We refer in this regard to the answers provided in **4.1 Withholding Tax** and **4.2 Other Taxes, Duties, Charges or Tax Considerations**. However, under specific conditions, interest payments made to lenders established in jurisdictions included on the EU list of non-cooperative jurisdictions for tax purposes are not deductible in Luxembourg.

5. Guaranties 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. Typical collateral will take the form of shares of a company, bonds, intercompany receivables, bank accounts and securities accounts, without prejudice to more peculiar sorts of collateral such as insurance receivables and the capital calls and commitments of the investors in a fund.

The Collateral Law clarifies that under its scope fall pledges on financial instruments which are in physical form, dematerialised, transferable by book entry, including the securities accounts maintained within or through secured electronic registration mechanisms, including distributed ledgers or electronic databases, or delivery, bearer or registered, endorseable or not and regardless of their governing law. The reference to tokenised financial instruments is a recent addition to the provisions of the Collateral Law, made pursuant to the Luxembourg law of 15 March 2023 (the "Blockchain III Law"), and confirms that the validity and perfection of a collateral created under the Collateral Law will not be affected by the technical means by which the pledged security is created or held.

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 introduced 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;
- in view of the general rights of (first-ranking) pledge, lien, set-off or retention banks usually have (pursuant to their general terms and conditions) on bank accounts, a pledge over a bank account is perfected upon its notification and acceptance by the bank with which the pledged bank account is maintained; the relevant bank usually signs an acknowledgement of the pledge, which is standard to contain a waiver of its aforementioned general rights of pledge, lien, set-off or retention over the relevant bank account; and
- 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 financial instruments and/or receivables to the beneficiary until the secured obligations have been discharged, triggering the obligation of the beneficiary to retransfer the financial instruments and/or 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 and/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 and/or issued 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 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 prohibiting the securing of 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 Guaranties

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. As such, a company may 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 a court finds 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 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 the Target

As a general rule, companies that are an acquisition target are prohibited from financing the buyout of their shares. However, it is possible for a public limited liability company, under cer-

tain 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 the 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 and/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 Guaranties**.

5.6 Release of Typical Forms of Security

A security, whether 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 provisions 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), the 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.

5.8 Priming Liens

Generally, under Luxembourg law, there are no security interests arising by operation of law. However, there are legal provisions that recognise specific preferences to a group of creditors, effectively making them senior to other creditors of the obligor. Following the insolvency of a Luxembourg company, certain creditors benefit from preferences arising by operation of law, which may supersede the rights of secured creditors. These are notably the salaried employees of an insolvent company, the Luxembourg tax authorities and the Luxembourg social security institutions.

Another example can be found in the Civil Code, which provides that the subrogee who partially paid the debt of a third party will be entitled to exercise its subrogation right against the original debtor only after the debt of the principal creditor has been entirely satisfied. The application of this provision leads to a de facto subordination of the subrogee.

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

- the foreign law was 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 Foreign Court Judgments**.

6.3 Foreign Court Judgments

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 Foreign Court Judgments**, 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 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, in principle, 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.

7.2 Waterfall of Payments

Pursuant to the Civil Code, the order of priority payments on a company's insolvency is 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 does not have sufficient assets to pay the preferred creditors with a general preferential right, the claims of the creditors take precedence over other creditors (including creditors with a special preferential right or a mortgage).

Creditors benefiting from a security governed by Collateral Law fall outside the scope of the above list, as further explained in **5.1 Assets and Forms of Security**.

7.3 Length of Insolvency Process and Recoveries

There is no statutory determination of the maximum duration of insolvency proceedings under Luxembourg law. They typically last between one and three years and in complex cases or where litigation is involved, they may last much longer.

With respect to the recovery rate of insolvency proceedings, it should be noted that in many cases the insolvent companies are holding companies or SPVs. In view of that, the recovery rate is typically rather high, especially with respect to SPVs, unless the value of the underlying assets has deteriorated. Additionally, most lenders, being institutional investors, are provided with collateral governed by the Collateral law, which is carved out from the insolvency proceedings.

7.4 Rescue or Reorganisation Procedures Other Than Insolvency

Following the adoption of the Reorganisation Law, certain reorganisation procedures which were previously available under Luxembourg law have been removed (specifically, controlled management and preventative composition proceedings) and replaced by new procedures which are described in detail below.

In-Court Amicable Arrangement

A company can engage in out-of-court negotiations with at least two of its creditors to reorganise all or part of its assets or operations. Once the debtor and creditors reach an amicable agreement, the debtor may apply to the court for certification, which, if granted, makes the agreement legally enforceable. The agreement remains confidential unless the debtor consents to its disclosure to third parties.

In-Court Collective Arrangement

A company may request a collective agreement proceeding, which allows them to negotiate a reorganisation plan with its creditors under supervision of the Luxembourgish courts. If the reorganisation plan proposed by the debtor is approved by the creditors, a Luxembourg court must decide whether it will homologate the plan by considering, among other things, whether the plan satisfies the criterion of being in the best interests of creditors. Subject to any disputes arising from the implementation of the plan, the judgment which decides on the homologation closes the judicial reorganisation proceedings. It is published in the Recueil électronique des sociétés et associations and notified by the registry to the debtor and the creditors. The judgement on the homologation of the reorganisation plan is subject to appeal within 15 days of its notification. Any creditor may request the revocation of the reorganisation plan where the debtor is manifestly no longer able to implement it. If the debtor is declared bankrupt, the reorganisation plan is automatically revoked.

Court-Ordered Transfer

The proceeding can be initiated either by the debtor, in their petition for judicial reorganisation or during the proceedings, or it can be requested by the Public Prosecutor, a creditor, or an interested party seeking to acquire the business. Upon initiation, a court-appointed agent (mandataire de justice) is designated. The agent's primary role is to organise and execute the transfer or assignment of movable or immovable assets that are essential to maintaining the economic activity. The scope of the transfer is determined either by the court or by the agent, who bears the significant responsibility of assessing the viability of the business or its segments to be transferred. The agent prepares one or more transfer proposals, which must be presented to the appointed judge and the debtor at least two days before the hearing.

Suspension of Payment

This procedure is governed by the Luxembourg Commercial Code (*Code de ommerce*) and remains unaffected by the Reorganisation Law.

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, despite the applicant currently operating at a loss, there are compelling indicators suggesting a likely return to a balanced financial state between its assets and debts.

The purpose of the reprieve from payments proceedings is to allow a business 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.

7.5 Risk Areas for Lenders

A lender might incur certain risks related to the recovery of its rights against a security provider or a guarantor in the process of insolvency. The transaction with the security provider or guarantor in the process of insolvency 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 suspect 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 deliberately 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 Recent Project Finance Activity

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 speaking, 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 largest 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 that 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 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 Governing Law

There is no statutory obligation which requires project documents to be governed by Luxembourg law. Thus, the parties are free to choose English or New York law as their governing law.

Nevertheless, Luxembourg law has become more and more popular among financial participants. See also **1.3 The High-Yield Market**.

8.4 Foreign Ownership

In principle, under Luxembourg law, there are no restrictions on the ability of foreign entities to have ownership rights on the surface and soil. It is also clear that such foreign companies can also have a lien thereon. It should, however, be noted that the legal title to natural resources is always held by the state. In this respect, should an entity discover the existence of natural resources it shall request a concession permit from the Luxembourg state.

8.5 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 Common Financing Sources and Typical Structures

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 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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