Dispute Resolution

Locus Standi and Debt Assignments: Key Luxembourg Rules

1. Concept

In Luxembourg law, there is a fundamental principle that "No one litigates through another" ("*Nul ne plaide par procureur*"), meaning that a person may not bring an action through proxy. A claimant must demonstrate a personal interest in the outcome of the proceedings to have standing before the court.

This aligns closely with the common law doctrine "no interest, no action." Importantly, this interest must exist on the date the proceedings are initiated by the claimant, or it risks having its claim declared inadmissible.

2. Exceptions

(i) Representation allowed by law

The concept of legal standing (*locus standi*) should not be confused with legal representation (*mandat ad litem*) and representation in court:

- Legal representation by a lawyer is, of course, permitted and even mandatory in certain proceedings;
- Representation in court: certain corporate entities which do not possess legal personality, such as the *Société en Commandite Spéciale* or SCSp (commonly used in the investment funds industry), representation before the courts is carried out by their general partner.

(ii) Creditor's derivative action (action oblique)

The *action oblique*, inherited from Roman law, under **Article 1166 of the Luxembourg Civil Code**, allows a creditor to act in the place of its debtor who neglects to exercise his own rights or claims against a third party. Any recovered assets return to the debtor's estate and are available to all creditors.

3. Claims brought by multiple claimants

Multiple claimants cannot bring a joint action against a defendant unless their claims arise from the same legal or contractual title. This procedural limitation raises important considerations in terms of litigation strategy and the efficient management of proceedings.

(i) Procedural efficiency: assignment of debts into one hand?

Where multiple creditors hold distinct claims against the debtor, it is possible to consolidate these debts by means of **assignment (*cession*)** to a single entity. This assignee would then be able to bring a single legal action on behalf of all assigned claims, thus achieving greater procedural efficiency and cost-effectiveness.

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Pursuant to **Article 1690 of the Luxembourg Civil Code**, the assignment of debt does not require the debtor's consent, but must be notified to or acknowledged by the debtor in order to be enforceable against it.

Luxembourg case law permits such notification to be effected through the writ of summons (*assignation*) or any document initiating proceedings. This benefits the assignee by allowing all mandatory assignment notifications to be combined in one procedural document, streamlining the process and preserving the element of surprise.

Formal requirements are limited to including extracts or copies of the assignment in the writ.

(ii) Exception: Debtor's right of redemption

If a claim was assigned while already subject to litigation (meaning legal proceedings are ongoing and the claim is contested) the assignment remains valid under Luxembourg law. However, under **Article 1699 of the Luxembourg Civil Code**, the debtor may exercise a right of redemption (*faculté de rachat or droit de retrait litigieux*).

This allows the debtor to redeem the claim by reimbursing the assignee the purchase price, plus costs and interest. If the claim was not in litigation at the time of assignment, Article 1699 does not apply, and the assignment is valid at any price agreed between the original creditor and the assignee.

Practice Area News

CJEU Decision Upholds Asymmetric Jurisdiction Clauses within the EU Under Certain Conditions. On February, 27 2025, the Court of Justice of the European Union ("CJEU") rendered a decision in the case *Società Italiana Lastre* SpA (SIL) v Agora SARL (Case C-537/23) in support of certain asymmetric jurisdiction clauses (i.e. where one party has more options than the other).

The CJEU clarified that the validity of jurisdiction agreements under Article 25(1) of the recast Brussels Regulation (the "Regulation") must be assessed using autonomous EU law criteria, not Member States' national law (reserved only for issues of substantive validity).

The CJEU held also that asymmetric jurisdiction clauses are valid if they follow cumulative criteria: **(i)** they clearly designate courts of EU Member States or Lugano II Convention States, **(ii)** are sufficiently precise and **(iii)** do not violate specific protective provisions of the Regulation.

First International Treaty Dedicated to the Protection of Lawyers. On May, 13, 2025, the Council of Bars and Law Societies of Europe ("CCBE") participated in the opening for signature of the Council of Europe Convention on the Protection of the Profession of Lawyer.

This event, held in Luxembourg's MUDAM museum, is an important step to reaffirm the rule of law and the legal profession. The Convention is the first legally binding international treaty dedicated to the protection of the legal profession.

It guarantees the right to practice as a lawyer without discrimination, obstruction or undue interference, and without being the target of assault, threats harassment, or intimidation, which have increased recently.

Entry into force: ratification by at least eight countries, including six member States of the Council of Europe.

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• **GSK Stockmann** is a leading independent European corporate law firm with over 250 professionals across our offices in Germany, Luxembourg, and the UK.

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