



LUXEMBOURG FURTHER STRENGTHENS ITS ATTRACTIVENESS FOR INTERNATIONAL LENDERS AND CREDIT INSTITUTIONS

Highlights and Market Outlook

The Luxembourg law of 5 August 2005 on financial collateral arrangements (the “**Law**”) has served as a highly effective mechanism for structuring credit transactions and collateral arrangements that are primarily structured at the level of Luxembourg holding companies and their subsidiaries. The Law is perceived by the market to protect creditors rights and is updated on a regular basis to keep pace with an ever-evolving restructuring market.

The current amendments to the Law entered into force on 24 July 2022 and further strengthens creditor protection as well as further enhances the attractiveness, versatility, and flexibility of the Luxembourg investment platform for cross border investments for debt and equity transactions and, more particularly in a context of distressed debt reorganizations.

In the current environment where the Directive (EU) 2019/1023 relating to “preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring and insolvency and discharge of debt” has not been fully implemented in all Member States, the EU lacks an effective and certain reorganization process and leaves creditors and debtors in an uncertain and vulnerable position, and as a result thereof most pan-European financing, refinancing, private equity and restructuring matters involve a Luxembourg single point of enforcement given the enhanced legal certainty and clarity that the Law provides as well as its automatic recognition throughout the EU.

Key improvements to the Luxembourg Law on Financial Collateral Arrangements

Below you will find a short overview of the key changes to the Law:

a) Extension of scope beyond financial collateral to fungible precious metals

The Law applies now fungible precious metals, which category includes metals of the same nature, form, quality and deposited without identification with

Luxembourg credit institutions or depositories of precious metals authorized in Luxembourg, such as gold.

b) Confirming market practice

- Enforcement Event / Application of Proceeds

Confirmation that **parties are free to define the collateral enforcement event** which can be any event “whatsoever (*quelconque*)”. This confirms that in Luxembourg **it is not necessary that the secured obligations be due and payable** if parties so agree.

Note however that if the security is enforced in the absence of secured obligations that are due and payable, then the Law now specifies that **the enforcement proceeds must be applied in discharge of the underlying secured obligations, unless** the parties otherwise agree.

- Financial Instruments admitted to trading

The Law now clarifies that the pledgee may sell the pledged financial instruments by carrying out a sale over **any trading venue** where the financial instruments are listed which includes any regulated market, multilateral trading facility or organized trading facility.

In absence of a specific agreement on valuation, the Law further specifies that the pledgee may appropriate the pledged financial instruments at their **market price** on the trading venue on which they are admitted to trading.

- Insurance Claims

All rights resulting from the insurance contract documenting the pledged insurance claims, including the exercise of the repurchase right or demand payment from the insurance company for the amounts due may could be subject to a pledge.

- Units or shares in undertakings for collective investments (UCIs)

It has been clarified that units or shares in UCIs may be appropriated:

- a) at their **market price** in case these are listed on a trading venue; or
- b) at the price set out in the latest published **NAV** to the extent such NAV is not older than one year. Under the previous version of the Law, an

appropriation at NAV was only possible in case the UCI published the NAV on a regular basis

It is now also possible for the pledgee to **redeem** the pledged units or share **at redemption price** in accordance with the constitutional documents of the relevant UCI.

c) Modernization of Public Auction Regime

The involvement of the Luxembourg Stock Exchange to carry out the enforcement of collateral by public auction is abolished. The Public Auction Regime has been modernized and serves as a secondary default procedure which only applies in case the parties have not agreed otherwise. The Public Auction may be carried by a Luxembourg bailiff or notary, who will be responsible for giving publicity to the auction and verifying the identity and creditworthiness of the bidders. The new regime has specific requirements on price setting and, publication and overbidding and creates a more flexible system.

d) Transfer of Title for security purposes now possible in favour of a security agent, trustee or fiduciary

One of the major advantages of the Law is the possibility to grant financial collateral arrangements in the form of a pledge in favour of a third party (other than the pledgee). This feature was not open for transfer of title arrangements. The amended version of the Law now extends confirms that the **title of transfer arrangements may be granted to a person acting in its own name but on behalf of the beneficiaries, a trustee or a fiduciary** (which in the latter case must be a professional of the financial sector which includes automatically payment institutions and electronic money institutions).

e) Netting provisions shielded from foreign law reorganization measures, winding-up proceedings or similar

The protection granted by the Law to financial collateral arrangements against **foreign** (in addition to national) law reorganization and bankruptcy measures, winding-up proceedings or similar has now been extended to netting provisions.