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Banking and Finance in Luxembourg 2022

RECENT LEGAL DEVELOPMENTS AND OUTLOOK ON 2023

Contents

Foreword

Despite the continuing geopolitical conflicts in Ukraine affecting all of Europe and an ever more dire energy and inflation crisis, the banking and finance industry in Luxembourg has managed to remain very active in 2022. This is, among others, also undoubtedly the result of constantly adaptations to the legal framework governing banking and capital markets transactions, proving to be increasingly suitable to all types of market participants looking for tailor-made solutions for their investments and acquisitions.

One of the major legal events in 2022 was the adoption of the new Luxembourg Securitisation Law of 25 February 2022. In addition, the latest developments in blockchain technology and the corresponding improvement of the Luxembourg legal framework in the context of dematerialised securities and DTL issuances are bound to provide further enhancements for various types of finance transactions. Furthermore, new legislation with respect to crowdfunding, the reform of the Luxembourg Financial Collateral Law and new, less onerous listing opportunities on the Luxembourg Stock Exchange are definitely worth some attention as they entail additional advantages for those who wish to benefit from Luxembourg's highly investment-friendly environment.

Against this backdrop, we have put together this overview containing useful in-depth information with respect to the above-mentioned topics. We hope that the readers will be able to find some interesting aspects they might not have been aware of yet and which could be helpful with respect to their future finance transactions in 2023.

In any event we wish you a very happy and prosperous new year!

Please feel free to reach out to us with any questions or comments you might want to discuss in more detail.

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CSSF E-RIIS submission portal

The Luxembourg financial supervisory authority (*Commission de Surveillance du Secteur Financier* (the "**CSSF**")) implemented on 4 March 2022 the mandatory use of a new reporting portal for the purpose of filing regulated information under the Luxembourg law of 11 January 2008 on transparency requirements for listed issuers (the "**Luxembourg Transparency Law**") as well as, among others, PDMR notifications (notifications done by persons discharging managerial responsibilities and persons closely associated with them) and inside information under Regulation (EU) 596/2014 on market abuse (the "**Market Abuse Regulation**" and the "**e-RIIS Portal**", respectively).

The e-RIIS Portal, does not, however, have any impact on the filing obligations which arise under the Luxembourg law of 21 July 2012 on mandatory squeeze-out and sell-out of securities of companies admitted to trading, nor does it affect any reporting obligations that might arise under the Luxembourg law of 19 May 2006 on takeover bids.

Before the implementation of the e-RIIS Portal market participants usually submitted information to be filed using emails and email pdf-attachments. From an identification security perspective this approach however had the disadvantage that a person could file particular information and documents with the CSSF on behalf of issuers or offerors without having to first identify themselves.

Practical considerations

In order to file regulated information under the Luxembourg Transparency Law, PDMR notifications or any other applicable information to be filed under the Market Abuse Regulation the submitting person will now need to be made through the e-RIIS Portal. In order to log into the portal, a LuxTrust certificate (i.e. an identification tool) is required. A physical token, smartcard or a mobile app (among others) can be used in order to connect with the e-RIIS Portal and certify the submitting person's identity ("who you are") and authenticate that person ("how do you prove who you are?").

Subsequently, once a LuxTrust device has been obtained a CSSF e-RIIS account (the "**e-RIIS Account**") needs to be created by the submitting person through which the reporting of the relevant information will be done. The CSSF also refers to such e-RIIS Accounts as "**User Accounts**". As is the case with the E-Prospectus Portal, any natural person filing information on behalf of the issuer needs to have their own e-RIIS Account in order to allow for the person to be able to submit information/documents and receive communications from the CSSF. In this respect, it is important to note that, although LuxTrust offers products for individuals and for professionals (i.e. a product issued for a specific individual person but which relates to a particular corporate entity, e.g. the issuer or relevant shareholder), several employees cannot share a single LuxTrust product, i.e. a company-related certificate.

Persons who have already created their own account for the purposes of the E-Prospectus Portal can use this e-Prospectus account for accessing the e-RIIS Portal.

Validation requirements

Any e-RIIS Account must be assigned to one or more so-called reporting entities. Reporting entities consist of (1) issuers of securities and (2) holders of securities and can be existing reporting entities or new reporting entities still to be created. Existing reporting entities are all the issuers which are subject to the Luxembourg Transparency Law. However, for entities or persons other than issuers subject to the Luxembourg Transparency Law the status of reporting entity must still be created in the e-RIIS Portal. While several e-RIIS Accounts can be assigned to one single reporting entity an e-RIIS Account can be assigned to different reporting entities as well.

These “new” reporting entities are mainly (1) shareholders subject to shareholders’ notifications under the Luxembourg Transparency Law, (2) issuers who must comply with the filing obligations as regards inside information under the Market Abuse Regulation without such information qualifying as regulated information under the Luxembourg Transparency Law (i.e. in the case of an Euro MTF listing only) or (3) PDMRs and persons closely associated with them with respect to (a) issuers subject to the Luxembourg Transparency Law and the Market Abuse Regulation or (b) issuers who are only subject to the latter. An issuer of securities, which is not subject to the Luxembourg Transparency Law, the creation of the new reporting entity must be validated by the CSSF before any filings can be done.

However, in both cases, i.e. in the case of an existing reporting entity or a new reporting entity, the first e-RIIS Account assigned to a reporting entity must always be validated by the CSSF and is assigned the role of a so-called 'Super User'. Such Super User is going forward allowed to make any additional assignments of other e-RIIS Accounts to the relevant reporting entity without any specific validation having to be effected in that respect.

Affected persons

Issuers

All regulated information arising under the Luxembourg Transparency Law (including inside information within the meaning of the Market Abuse Regulation) must be filed via the e-RIIS Portal. The obligation to also effectively disseminate (publish) such information and to store it with the OAM operated by the Luxembourg Stock Exchange is not affected by the implementation of the e-RIIS Portal.

It is also important to note that issuers of securities, the securities of which have only been listed on the Euro MTF, and PDMRs and persons closely associated with them in such Euro MTF listed issuers, despite the issuer not being subject to the Luxembourg Transparency, are also required to do the relevant filings via the e-RIIS Portal.

Shareholders

Shareholders in the context of the filing of shareholders’ notifications with the CSSF under the Luxembourg Transparency Law must also use the e-RIIS Portal. The same applies to the filing requirement vis-à-vis the CSSF which the issuer is required to comply with once it has received such a notification from the relevant shareholder since from an issuer’s perspective a shareholder notification also constitutes regulated information and as such must be published, stored with the OAM and filed with the CSSF accordingly.

PDMRs

As mentioned above PDMRs and persons closely associated are also required to use the e-RIIS Portal for the purpose of filing the relevant PDMR notification under article 19 of the Market Abuse Regulation. In this context, for an issuer whose home Member State for transparency purposes is Luxembourg the notification also constitutes regulated information pursuant to the Luxembourg Transparency Law and therefore a CSSF filing obligation arises in this respect as well. Moreover, the issuer is obliged to publish and store with the OAM such information pursuant to article 19 of the Market Abuse Regulation.

The new Luxembourg Securitisation Law

After a prolonged absence of major changes in law 2022 saw a major development in the Luxembourg securitisation sector through the entry into force on 8 March of the Luxembourg law of 25 February 2022 amending the law of 22 March 2004 on securitisation (the "**New Securitisation Law**").

The purpose of the New Securitisation Law has been twofold:

a. to explicitly set out and clarify current market practice, such as the criteria to be taken into account when assessing the authorisation requirements for securitisation undertakings which offer securities to the public on a continuous basis while introducing legal definitions in relation to the treatment of different types of securities with respect to their legal subordination;

and

b. to lift particular restrictions securitisation undertakings had to comply with under the previous regime, such as certain constraints regarding borrowing structures and portfolio management.

FUNDING OF THE SECURITISATION UNDERTAKING

Under the old regime, Luxembourg securitisation undertakings had to be financed by the issuance of securities whose value or yield depended on the risks assumed by them.

Given the absence of specific legal definitions of what type of instruments could indeed be defined as 'securities', there was frequently some uncertainty where Luxembourg securitisation undertakings issued instruments subject to a law other than Luxembourg law. In that scenario the governing law of the relevant instrument needed to qualify such instrument as 'securities' in order for the instrument to be eligible.

The New Securitisation Law now refers to the notion of 'financial instruments' and provides a definition by reference to the Luxembourg law of 5 August 2005 on financial collateral arrangements instead of securities. This law contains an extremely broad definition of financial instruments, which now also captures German law governed "*Schuldscheine*".

Under the old regime a securitisation undertaking was foremost an issuance vehicle and therefore the entry into borrowing structures by taking out loans to investors could only be done on an ancillary basis.

These restrictions were no longer reflective over the wider securitisation market practice. Indeed Regulation (EU) 2017/2402 of 12 December 2017 creating a general framework for securitisation (the "**EU Securitisation Regulation**") does not require a securitisation vehicle to issue securities in order to fall under its scope.

The New Securitisation Law removed these restrictions by expanding the scope of financing arrangements available to a securitisation undertaking by permitting it to enter into loans in addition to or instead of, the issuance of financial instruments for the purpose of, wholly or partially, funding the acquisition of the underlying assets on which the loans depend.

ACTIVE MANAGEMENT OF RISK PORTFOLIO

A key aspect of the Luxembourg securitisation regime can be seen in the fact that the active management by a securitisation undertaking of its securitised portfolio is generally not permitted and that the portfolio management must therefore be restricted to a prudent person's passive management.

This restriction on active management had historically been a major challenge for the development of the Luxembourg Collateral Loan Obligation (CLO) market. The New Securitisation Law eased this restriction to a considerable extent and now provides major opportunities for market participants that previously could not offer their products through Luxembourg vehicles.

The New Securitisation Law has implemented an exception to this general requirement of passive management in so far as it allows active management of a portfolio consisting of debt securities, debt financial instruments or receivables on the condition that the securitisation undertaking has not issued financial instruments to the public to finance the acquisition of the underlying assets.

This means that it should now be possible to manage risk portfolios, presumably even in accordance with short-term market fluctuations and price developments. The easing of this restriction has undoubtedly started to create new extensive opportunities for actively managed CLOs or CDOs to be set up in Luxembourg.

However, it is worth emphasizing that the passive management restriction must still be complied with whenever the underlying portfolio of assets consists of other types of securities such as equity securities or other physical assets.

GRANTING OF COLLATERAL AND SUBSIDIARIES

Another restriction under the old regime was that the granting of collateral over a securitisation vehicle's assets was limited to situations in which it was done for (i) the benefit of the vehicle's investors or (ii) the purpose of assuring the securitisation of the charged assets.

More specifically, the former version of the New Securitisation Law explicitly required that the creation of security interests over the securitisation undertaking's assets could only be done in order to secure the obligations the securitisation undertaking had assumed for their securitisation or in favour of its investors, their fiduciary-representative or the issuing vehicle participating in the securitisation.

This restriction has been lifted considerably as securitisation undertakings are now allowed to provide security for obligations **relating to the securitisation transaction**. This change in law allows for greater flexibility in structuring the collateral package for securitisations transactions as such a securitisation undertaking may now grant security for the obligation of third parties or in favour of creditors other than its investors (such as custodians, registrars or other related parties). This means that a securitisation undertaking acquiring a junior loan is also allowed to provide security over that loan in favour of the senior lenders. Likewise, where the securitisation undertaking holds assets via one or more wholly owned subsidiaries it has become possible for the securitisation vehicle to grant security or give guarantees with respect to the indebtedness of the subsidiaries in question.

With respect to the latter scenario it is worth noting that the New Securitisation Law now explicitly provides that a securitisation vehicle is allowed to acquire directly or indirectly the assets which it securitises.

AUTHORISATION REQUIREMENTS

The New Securitisation Law now also contains an explicit definition as to when a securitisation undertaking is to be considered to be "issuing securities to the public on a continuous basis" triggering the requirement to be authorised by the CSSF.

The answer had previously only been based on the CSSF FAQs on Securitisation which provided that issuances were made to the public on a continuous basis if more than three issuances were made to the public per calendar year on an all-compartment basis.

The New Securitisation Law now provides a statutory definition of "issuance to the public on a continuous basis" which has the benefit of a higher degree of legal certainty with respect to this pivotal question and clarifies that an issuance is not to be viewed as being made to the public if it falls within any of the following categories:

a. a. the issuance is solely made to professional clients as defined in MiFID II as implemented in the Luxembourg law of 5 April 1993 on the financial sector;

b. b. the denomination of the financial instruments offered is equal or exceeds EUR 100,000; and

c. c. the financial instruments are distributed by way of a private placement.

Article 19 (2) of the New Securitisation Law codifies the position provided under the CSSF FAQs on Securitisation by providing that securitisation undertakings which issue on a continuous basis are those that carry out more than three issuances of financial instruments offered to the public during one financial year. In this respect, the number of issuances corresponds to the total number of issuances carried out by all compartments of the securitisation undertaking during that period.

In contrast, item (b) above means that more certainty was obtained in relation to the required per unit minimum denomination securities in order for them not to be deemed to be issued to the public as the CSSF FAQs on Securitisation seemed to suggest that should at least be EUR 125,000.

This divergence had previously led to uncertainty in cases where the per unit minimum denomination of securities offered by a securitisation undertaking only amounted to EUR 100,000 and not to EUR 125,000. The legal consequence was clear under Regulation (EU) No 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "Prospectus Regulation") as no prospectus needed to be approved for such offers under prospectus rules. However, under the previous securitisation regime this did not automatically make the offer a private placement under Luxembourg securitisation rules on account of the CSSF's explicit reference to a per unit minimum denomination of Euro 125,000.

Criminal sanctions and fines have also been introduced in a situation in which financial instruments are publicly issued without the prior authorisation by the CSSF. Persons infringing on the authorisation requirement can be punished by an imprisonment from three months to two years and/or a monetary fine ranging from EUR 500 to EUR 125,000.

TRANCHING IN THE CONTEXT OF THE CLARIFICATION OF SUBORDINATION RULES

The New Securitisation Law also clarifies certain aspects regarding the issuance of tranched securities. Only structures in which a securitisation undertaking engages in tranching fall within the scope of the EU Securitisation Regulation.

Tranched securitisation transactions necessitate that the requirements with respect to risk retention, transparency and due diligence as required by the EU Securitisation Regulation be complied with by the securitisation undertaking, in addition to the application of the general framework of the New Securitisation Law. Consequently, the provisions set out in both the New Securitisation Law and the EU Securitisation Regulation have to be respected by a Luxembourg incorporated securitisation vehicle in such a case.

While the tranching for the purpose of the EU Securitisation Regulation should be based on contractual subordination, the New Securitisation Law includes explicit rules regarding the legal subordination between different types of securities, unless contractually agreed otherwise.

The following ranking of instruments issued by a securitisation vehicle has been legally established:

- the units, shares or interests issued by a securitisation undertaking are subordinated to the other financial instruments issued and loans entered into by the securitisation vehicle;
- the shares or interests in a securitisation undertaking are subordinated to any beneficiary shares issued by the securitisation vehicle;
- the beneficiary shares issued by the securitisation undertaking are subordinated to the debt financial instruments issued and the loans entered into by the securitisation vehicle; and
- the debt financial instruments with non-fixed yield issued by a securitisation undertaking are subordinated to any such debt financial instruments which have a fixed yield.

Generally, this means that any form of debt ranks senior to shares, units and beneficiary units and fixed income debt ranks senior to profit participating debt.

There is however the general possibility for the securitisation undertaking to derogate from these subordination rules in its articles of association, its management regulations or any other agreement entered into by the securitisation undertaking by explicitly establishing different subordination rules with respect to particular issuances.

ACCOUNTING AND DISTRIBUTION RULES TO BE ESTABLISHED ON A PER-COMPARTMENT BASIS

The New Securitisation Law also provides for the possibility for equity-financed compartments to make certain decisions at the compartment level in order to obtain increased investor protection.

Concretely, this means that only the shareholders or members who hold shares or units issued by the relevant compartment can approve the balance sheet or profit and loss accounts provided such right is set out in the securitisation undertaking's constitutive documents. In the same manner, the profit and the distributable reserves can also be determined on a compartment basis, without taking into account the situation of the securitisation undertaking as a whole.

Furthermore, the New Securitisation Law requires that securitisation vehicles which were set up under the corporate form of a partnership (either general, limited or special limited) draw up and publish annual accounts in accordance with the provisions of the Luxembourg law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of companies. The purpose of this approach is to ensure a degree of transparency and protection for investors who thus benefit from increased disclosure of the financial information as regards the securitisation undertaking in which they invest.

ADDITIONAL LEGAL FORMS AND RCS REGISTRATION REQUIREMENT FOR SECURITISATION FUNDS

Another area of increased flexibility under the New Securitisation Law is that it has opened the door to new legal forms for securitisation undertakings.

It is now possible to set up securitisation undertakings as unlimited companies (*sociétés en nom collectif*) (SENC), common limited partnerships (*sociétés en commandite simple*) (SCS), special limited partnerships (*sociétés en commandite spéciale*)(SCSp) and simplified public limited liability companies (*sociétés par actions simplifiées*) (SAS) in addition to the previously allowed legal forms (being, private limited liability companies (*société à responsabilité limitée*), public limited liability companies (*société anonyme*) and partnership limited by shares (*société en commandite par actions*).

This increased flexibility in the set-up and structuring of securitisation undertakings means that the incorporation in front of a notary is now no longer needed in case of the incorporation of an SV as a partnership.

The new Luxembourg Financial Collateral Law

On 7 July 2022, the Luxembourg Parliament (*Chambre des Députés*) voted a new bill no 7933 (the "**Bill**") amending the Luxembourg law of 5 August 2005 on financial collateral arrangements (the "**Financial Collateral Law**").

While the Bill primarily intended to align certain provisions of Luxembourg law with Regulation (EU) 2021/23 of 16 December 2020 on a framework for the recovery and resolution of central counterparties the Luxembourg Parliament also seized the opportunity to update the Financial Collateral Law in line with the current market practice and case law.

Enforcement Trigger – Freedom of choice

In line with the general creditor friendly orientation of the Financial Collateral Law, the Luxembourg courts had previously confirmed that security financial collateral arrangements could be enforced upon the occurrence of any contractually agreed enforcement trigger event (in the specific case, a breach of financial covenant), irrespective of whether a payment default occurred or any secured obligations are due and payable. This flexibility in the structuring of an enforcement is a clear stand-out feature of the Luxembourg financial collateral regime for creditors compared to other European countries.

The Financial Collateral Law now canonises this jurisprudential position as it contains an updated definition of "Enforcement Event" which is "any event of default or any event whatsoever" (fr. ***'une défaillance ou tout autre événement quelconque'***).

The addition of the word "whatsoever" is an emphasis on the contractual freedom for the parties with respect to the determination of events which may lead to the triggering of the collateral without the relevant financial obligations having had to become due.

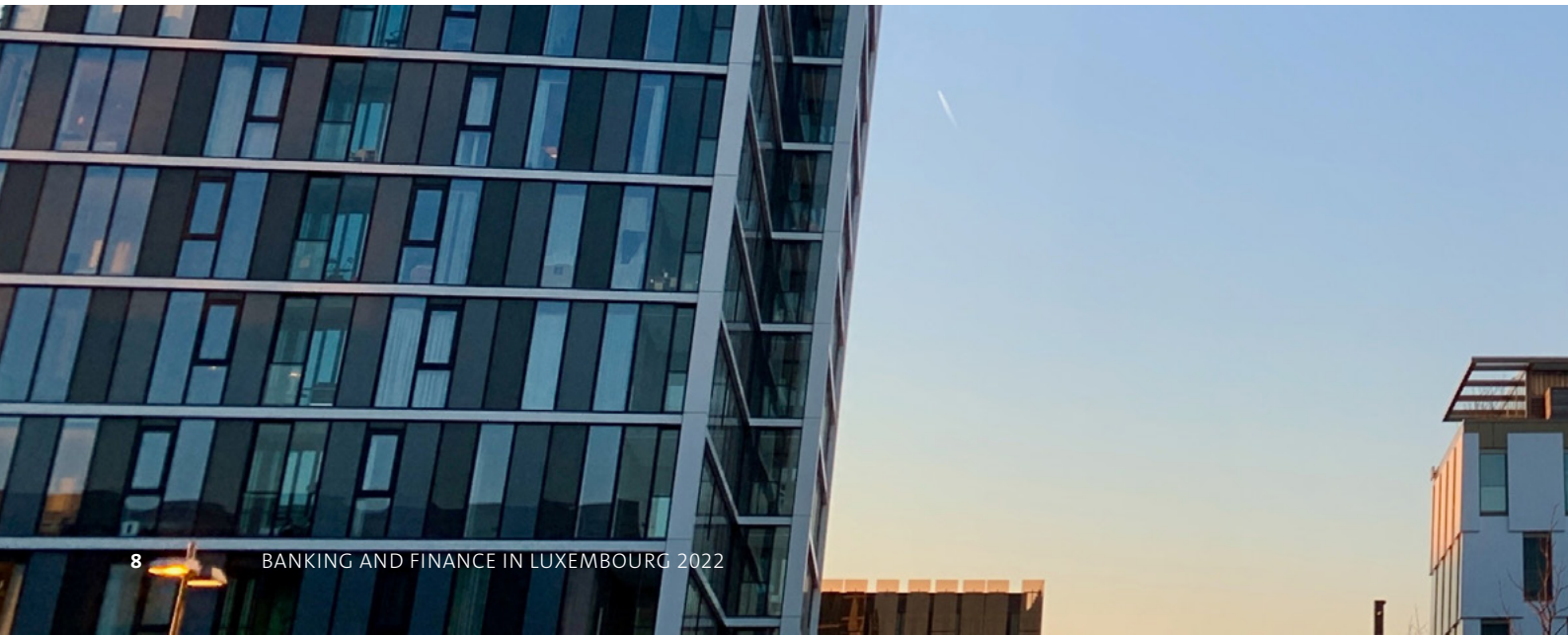
Sale of pledged assets – Modernisation and increased flexibility

Furthermore, more substantial amendments relating to the enforcement by way of the sale of pledged assets have been introduced in the Financial Collateral Law. However, it should be noted that the parties may always agree on alternative methods of enforcement and the provisions of the Financial Collateral Law only apply to the extent the pledgor and the pledgee have not agreed otherwise.

In the past the Financial Collateral Law provided the pledgee with the possibility to enforce pledged assets "by private sale on normal commercial conditions, by sale over a stock exchange or by public auction".

By default, public auction was to be effected through the Luxembourg Stock Exchange (the "**LuxSE**") based on a specific license.

Over the years, the reference to the LuxSE had however become outdated as its status had changed and therefore a new detailed public auction procedure was introduced into the Financial Collateral Law. Public auctions of pledged assets can now be led by a notary or bailiff following a detailed procedure set out in the Financial Collateral Law. Furthermore, the Financial Collateral Law now explicitly provides that assets can be acquired in a public auction through any payment method, including set-off against the obligations secured under the relevant security



agreement. Although public auctions were rarely used in practice, the updated public auction regime has become more agile.

Separately, in respect of the private sale of financial instruments admitted to trading, the reference to 'stock exchange' was updated clarifying that the sale of assets can happen on the platform on which the pledged assets are admitted to trading and this does not need to be a regulated market only. Thus, assets admitted to trading on any regulated or un-regulated market can be directly disposed of on the same market. This includes any Luxembourgish, European or third country regulated markets, MTFs or OTFs.

Collateral over units in investment funds – Extension of enforcement methods

An additional new feature of the Financial Collateral Law is the introduction of provisions regarding the value at which units in an undertaking for collective investments subject to a security financial collateral arrangement can be appropriated.

The Financial Collateral Law now specifies that such units may be appropriated either (a) (for units admitted to trading on an exchange) at the market price of the relevant units or (b) at their latest net asset value (which cannot be older than a year).

According to a new sub-paragraph (f) of the article 11(1) of the Financial Collateral Law, the pledgee may also request the redemption of the pledged units or shares at a price determined in accordance with the constitutional document of the relevant undertaking for collective investments.

Insurance contracts – Precisions on enforcement methods

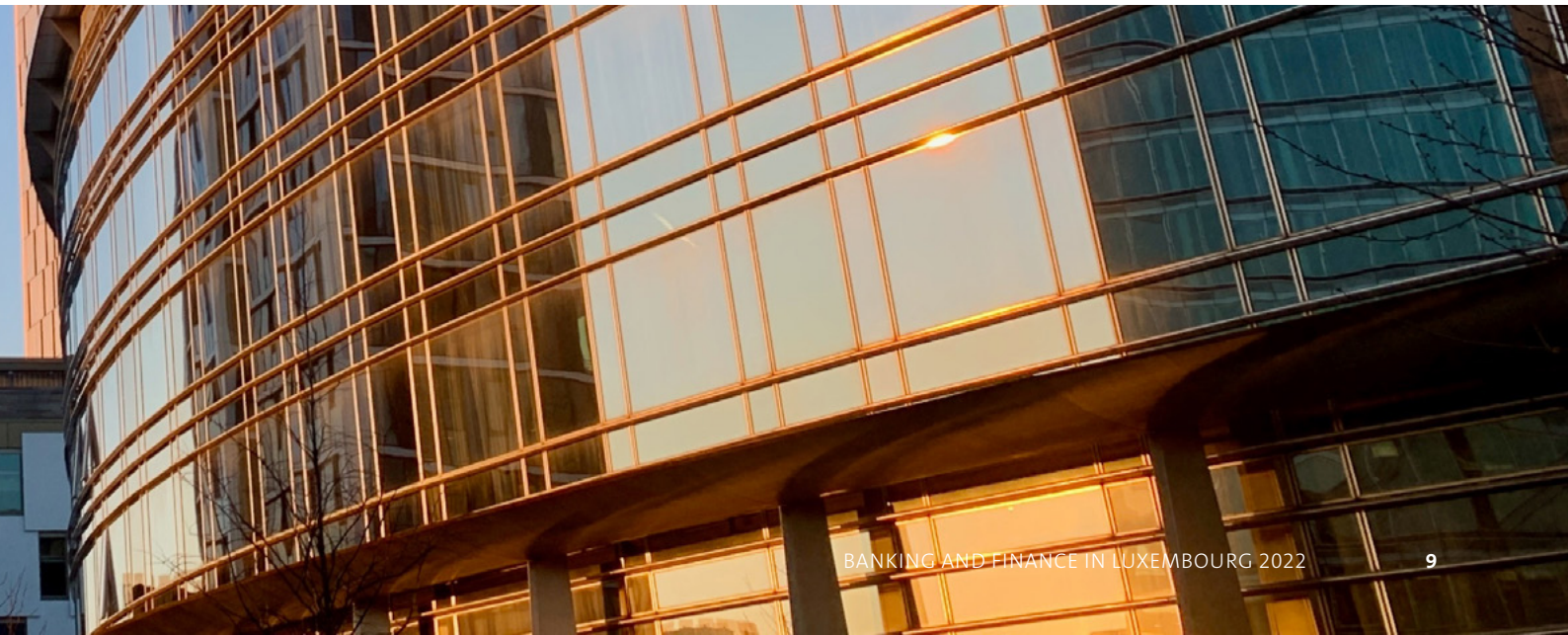
An additional sub-paragraph (g) covering insurance contracts was included in article 11(1) of the Financial Collateral Law, indirectly confirming that insurance contracts constitute financial collateral within the scope of the Financial Collateral Law (some legal scholars had debated this previously). The Financial Collateral Law now offers a new, specific enforcement method for this type of claims by providing that a pledge over such insurance contracts can be enforced by requesting the repurchase of the contract or demanding the payment of all sums due under the insurance contract in satisfaction of the secured obligations.

Application of proceeds – Clarifications

As mentioned above, one of the advantages of the Luxembourg financial collateral regime is that is allows security interests to be enforced even if there is no payment default or acceleration of the underlying secured obligations.

This however also raised the question how and when enforcement proceeds should be applied against the relevant secured obligations or whether the pledgee should be required to hold these proceeds as continuing security until the secured obligations become due and payable.

The Financial Collateral Law now clarifies that, unless otherwise agreed by the parties, enforcements will immediately be applied against the secured obligations on enforcement. This clarification again cemented a position previously adopted by legal practice into the Financial Collateral Law.



FASTLANE admission procedure

In October 2022, the LuxSE decided to exempt the admission of certain types of securities to trading on the EuroMTF market from the requirement to produce a prospectus by introducing a so-called "FastLane admission process", which is of particular interest to issuers whose shares are admitted to trading on certain regulated markets and intending to list debt securities in the EU.

FastLane admission and its conditions

Under the new rules, mandatory prospectus approval is no longer required by the LuxSE for the admission to trading of the following types of securities:

- Non-equity securities and equity convertible bonds issued by Issuers whose shares are admitted to trading on an EU regulated market or equivalent;
- Non-equity securities issued or guaranteed by states (EU Member States excluded), their regional or local authorities;
- Non-equity securities issued or guaranteed by EU Member States' regional or local authorities;
- Non-equity securities issued by multilateral institutions which are not public international bodies and of which at least one OECD Member State is a member;
- Securities issued by central banks; or
- Securities issued by associations with legal status or non-profit-making bodies, recognized by a Member State or an OECD Member State, in order to obtain the means necessary to achieve their non-profit-making objectives.

Admission to trading of these types of securities will now be made on the basis of the new chapter IV to the Part II of the LuxSE rules and regulations (the "**ROI**") by way of submission of (i) an admission document containing the terms and conditions of the relevant securities (the "**Admission Document**") and (ii) an application form which must include public sources of information about the issuer and the securities (the "**Application Form**").

Procedure

The draft Admission Document should be submitted to the LuxSE at least three business days prior to the expected listing date. The final version of the Admission Document must be submitted for publication on the date of the beginning of the admission to trading.

The Admission Document will not be approved by the LuxSE. Thus, as opposed to a prospectus review, such process for admission to trading is faster than the usual treatment of the admission request. However, the LuxSE may require the submission of any supplemental documents necessary for the examination of the request, depending on the particularities of the issuance and the financial position of the issuer or guarantor.

The new admission process is particularly interesting for any issuers whose shares are already admitted to trading on an EU regulated market or a market considered equivalent. Such issuers may now list debt securities on the EuroMTF of the LuxSE without even having to present a short-form prospectus. For the purposes of the admission of securities to the EuroMTF, regulated markets in the UK or Switzerland should be considered equivalent by the LuxSE.

Notwithstanding the above, issuers may still choose to submit a prospectus for approval by the LuxSE on a voluntary basis.

Ongoing disclosure obligations

The exemption from the obligation to publish a prospectus as described above does however not affect the issuer's disclosure obligations under the ROI and the Market Abuse Regulation.

Blockchain developments

The use of virtual assets in the financial sector is one of the most talked about developments in recent years and its potential impact on the financial sector can be described as significant.

The Luxembourg legal framework is particularly well-prepared for investments in virtual assets for a number of reasons.

Since April 2013 Luxembourg has benefited from a legal framework applicable to dematerialised securities keeping pace with market developments. This dematerialised securities framework is similar to the French, Swiss and Belgian regimes but exists in addition to the more traditional bearer and registered forms of securities. Generally speaking, dematerialisation is achieved by the registration of the securities in an account held by a single body such as a settlement organisation or a central account keeper.

The Luxembourg Blockchain Laws

On 26 January 2021 the Luxembourg dematerialisation framework was amended by the entry into force of the so-called Blockchain Bill (Bill 7637) (the "**Luxembourg Blockchain II Law**"). The Luxembourg II Blockchain Law explicitly allows for the issuance of dematerialised securities using distributed ledger technology such as Blockchain ("**DLT**").

Previously, the Luxembourg dematerialised securities framework had already been modified by the law of 1 March 2019 with a view towards establishing a legal framework for DLT allowing accounts to be held and securities to be registered on such accounts pursuant to technologies such as DLT (the "**Luxembourg Blockchain I Law**"). However, securities in such accounts continued to need to exist independently in the form of a global certificate, registered or bearer securities. The Luxembourg Blockchain II Law extended this legal framework by two major aspects.

The Luxembourg Blockchain II Law introduced a new type of issuer account corresponding to an account held with a settlement organisation or a central account keeper (as referred-to below) for the purpose of registering securities issued using DLT. This means that no other record of the existence of such securities is required allowing them to only be settled within a DLT environment. The main advantage of using DLT rather than traditional methods for issuing securities is that DLT creates a network of data which is shared among peers participating in DLT without requiring recourse to a number of usual intermediaries.

Another innovation introduced by the Luxembourg Blockchain II Law is the amendment to the definition of the notion of "central account keepers".

Prior to the Luxembourg Blockchain II Law only entities having received a dedicated authorisation from the CSSF as a financial services provider under article 28-11 of the Luxembourg Financial Sector Law or settlement organisations were entitled to hold securities accounts for issuers in Luxembourg. The Luxembourg Blockchain II Law now however also allows credit institutions and investment firms to operate as central account keepers for the purpose of the above referred-to issuer accounts using DLT without being required to obtain any additional authorisation from the CSSF.

White paper published by the CSSF

In January 2022 the CSSF published a white paper relating to Distributed Ledger Technologies & Blockchain (the "White Paper") which aims to create a checklist for businesses considering implementing DTL solutions in their operations. The White Paper is addressed to professionals providing or intending to provide services to the Luxembourg financial sector.

The White Paper has been divided into six chapters and includes an appendix. The document starts by introducing various notions that characterise a DLT and a typology of distributed ledgers, a detailed description of the actors participating in a typical DLT ecosystem then follows. Most importantly, use-cases of the technology are presented and examined with an emphasis on the relationships between the developers/various service providers and the end-user. Considerations relating to the outsourcing regulatory framework are also introduced. In addition, the appendix to the White Paper provides for a list of DLT specific key-questions and considerations relating thereto.

While the White Paper does not aim to be a guide to basic notions of DLT and blockchain technologies, it should be a useful checklist and introduction to risks involved for any service provider contemplating introducing solutions based on a DLT in Luxembourg.

Admission of DLT Financial Instruments on SOL

Another important development with respect to DTL securities in 2022 was spearheaded by the LuxSE. The LuxSE announced on 31 January 2022 that it would admit security tokens ("**DLT Financial Instruments**") on its Securities Official List (the "**LuxSE SOL**"), which is a dedicated section of the LuxSE's official list.

This means that such financial instruments cannot be admitted to trading on either the regulated market of the LuxSE or on the Euro MTF market. However, the registration of the DLT Financial Instruments on the SOL already provides increased visibility of such issuers of DTL Financial Instruments to market participants and facilitates the calculation and dissemination of indicative prices and other securities-related information data for these type of securities.

Listings on the LuxSE SOL do not trigger the application of the disclosure and publication regime under Directive 2004/109/EC on the harmonisation of transparency requirements, the Market Abuse Regulation or the ROI. The reason for this is the fact that inscriptions on the LuxSE SOL are exclusively governed by a specific rulebook of the Luxembourg Stock Exchange and the Grand-Ducal Regulation of 30 May 2018 which implements Directive 2001/34/CE establishing the existence of the official list (the "**Rulebook**").

Listing procedure

Instead of submitting a prospectus which complies with the provisions set out in both the Prospectus Regulation and Commission Delegated Regulation (EU) 2019/980 for any admission to trading on the regulated market of the LuxSE or a prospectus conforming to the rules set out in the ROI for the Euro MTF market, the issuer only needs to provide an information notice in English, French or German which must include minimum details about the securities and the issuer to be approved by the LuxSE (the "**SOL Information Notice**").

Ongoing disclosure obligations

The ongoing disclosure regime applicable to SOL listings is less onerous than the regime applicable to fully-fledged admissions to trading on the regulated market or the Euro MTF market. Nonetheless, it resembles in part the communication obligations applicable to Euro MTF issuers as contained in chapter 9 of the ROI. However, no specific publication obligations apply. Consequently, the issuer is not required to provide any periodic reporting such as the publication of annual or half-yearly financial reports.

DLT Guidelines

With respect to an LuxSE SOL listing of DLT Financial Instruments, the LuxSE has published specific guidelines setting out the applicable eligibility criteria and listing requirements (the "**DLT Guidelines**").

This means that issuers intending to list their crypto-assets on the LuxSE SOL will need to comply with both the DLT Guidelines and the Rulebook.

The LuxSE in a first phase will however only consider applications for the registration of DLT Financial Instruments that fulfil the following cumulative criteria:

1. debt instruments offered exclusively to Qualified Investors within the meaning of the Prospectus Regulation or which have been issued in a denomination per unit that amounts to at least Euro 100 000;
2. issuers having previously issued securities in capital markets or applicants having a proven track record in capital markets transactions; and
3. pricing in fiat currency.

The DLT Guidelines set out seven specific information items that will need to be covered in the SOL Information Notice.

There are two specific points that are in particular worth focusing on:

The issuer must provide a confirmation that a contingency procedure in case of a failure in the distributed ledger technology system that is being used has been put in place which allows for the identification of the holders of the DLT Financial Instruments.

Finally, LuxSE SOL listings of DLT Financial Instruments will only be accepted if the DLT Financial Instruments qualify as securities under the law under which the instruments in question have been issued. This means that under the relevant law the DLT Financial Instruments need to qualify as bonds or other debt securities which have either been issued by a company or a state, its regional or local authorities or by an international public body.

Bill of law N° 8055

In July 2022 bill of law N° 8055 was lodged with the Luxembourg Parliament. This bill can be seen as a continuation of the Luxembourg Blockchain I and II laws. It proposes to amend the Luxembourg Financial Collateral Law in order to explicitly recognise the possibility for market participants to take security over tokenised securities. This means that the accounts in which the tokenised securities are held are intended to be subject to the same perfection requirements as book entry-registered financial instruments. Usually, a pledge over such book entry-registered securities is perfected by the notification of the custodian, requiring the latter to comply with the terms of the pledge agreement. As in most cases the custodian is already an inherent part of the relevant DLT platform it should be fair to suppose that the entry into a specific smart contract which formalises the terms of the pledge on the DLT platform should be sufficient for the notification of the security terms. Furthermore, another perfection formality could be the transfer of the tokenised securities to the account of the relevant pledgee or a trusted third party. Such procedure would not necessitate the intervention of a custodian and the rights and powers of the pledgee/third party could be expressly set forth in the underlying contract.

Crowdfunding

On 8 March 2022 the Luxembourg law of 25 February 2022 on crowdfunding (the "**Luxembourg Crowdfunding Law**") entered into force implementing into Luxembourg law Regulation (EU) 2020/1503 of 7 October 2020 on European crowdfunding service providers for business (the "**Crowdfunding Regulation**"). The Luxembourg Crowdfunding Law has designated the CSSF as the competent authority for the supervision of crowdfunding service providers as referred-to in the Crowdfunding Regulation and to grant the necessary licences. In this respect, it is important to note that a crowdfunding service provider within the meaning of the Crowdfunding Regulation requires a licence prior to commencing any activities. Furthermore, the CSSF is the competent authority to impose administrative sanctions in case of violations of the law.

Outlook on 2023

The new legislative framework regarding the Luxembourg Securitisation Law and the Luxembourg Financial Collateral Law will undoubtedly continue to raise the overall level of interest for new investments including issuances of securities and various types of asset acquisitions in Luxembourg despite ever growing inflation and energy provision related concerns.

In particular, with respect to the Luxembourg securitisation regime, it will be interesting to see whether the CSSF intends to publish updated guidelines regarding securitisation and how any future developments regarding the EU Securitisation Regulation might affect market participants' investment decisions. Furthermore, as regards the listing of securities on the LuxSE it can be expected that both the LuxSE and the CSSF will continue to provide their very issuer-friendly services and that a growing number of issuers will indeed be using the new Fastlane admission procedure.

The same should apply for market participants that intend to issue dematerialised securities using distributed ledger technology and to have such DLT Financial Instruments listed on the LuxSE. In this respect, it is fair to say that the Luxembourg legal framework is among the most progressive in all of Europe which will be further enhanced once the Bill of Law N° 8055 will come into force in 2023.

Given the Luxembourg legislator's ongoing efforts to provide a highly flexible and pragmatic business environment offering a myriad of solutions for both issuers and investors one has to conclude that Luxembourg is well poised to continue to play a major role in Europe with respect to banking and finance transactions in 2023.

Our dedicated Luxembourg team of lawyers would be delighted to assist you on your future finance transactions.

In this respect, our Luxembourg Ashurst office provides full legal advice and services with regard to all aspects of corporate, finance, funds and investment management including related tax and regulatory matters and is always available to discuss any of your future projects.

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