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Luxembourg Newsflash - 21 December 2023

Modernisation of Luxembourg insolvency law - Luxembourg collateral arrangements remain robust and bankruptcy remote

Luxembourg Collateral arrangements continue to be enforceable on a same day basis under the new Luxembourg insolvency law.

Modernisation of Luxembourg insolvency law

Luxembourg insolvency law has recently added new measures and proceedings designed to reorganise the assets or activities of a Luxembourg debtor.

The law of 7 August 2023 on business preservation and modernisation of bankruptcy law (Reorganisation Law) applies to certain Luxembourg commercial companies and came into force on 1 November 2023.

The Reorganisation Law implemented into Luxembourg law Directive (EU) 2019/1023 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, and amending Directive (EU) 2017/1132 (Restructuring Directive).

The Reorganisation Law allows debtors facing financial difficulties to, *inter alia*, file for judicial reorganisation proceedings, including in the form of a collective agreement (*réorganisation judiciaire par accord collectif*), a procedure similar to the tested English law restructuring plan. If the conditions for opening judicial reorganisation proceedings appear to be met, the court will declare the opening of the judicial reorganisation and set the duration of the suspension period with respect to certain enforcement actions.

Enforceability of Financial Collateral Arrangements during reorganisation proceedings

The law of 5 August 2005 on financial collateral arrangements (Collateral Law) implemented Directive 2002/47/EC of 6 June 2002 on financial collateral arrangements into Luxembourg law. It provides a high degree of protection to creditors who benefit from financial collateral (e.g. pledge or transfer of title for security purposes) in the event of insolvency proceedings or reorganisation measures. This protection has been confirmed over time by the Luxembourg courts.

The Reorganisation Law has not amended the Collateral Law. Collateral arrangements created under the Collateral Law (Collateral Arrangements), such as pledges over claims or over shares in a Luxembourg company, remain enforceable through a same day enforcement process, despite the opening of any insolvency proceedings, including any reorganisation proceedings under the Reorganisation Law.

In very limited cases, i.e. where (i) the parties have commercially agreed that an enforcement requires an acceleration of the secured debt and (ii) judicial reorganisation proceedings under the Reorganisation Law have been opened in respect of the debtor of the secured debt, the relevant creditors may, under certain circumstances, be temporarily suspended from accelerating the secured debt in accordance with Article 30 of the Reorganisation Law and hence face a situation where enforcing their security rights might be delayed.

However, this scenario can easily be avoided by including a stand-alone enforcement event in the relevant Collateral Arrangements, such that the relevant security rights may be enforced upon occurrence of any of the following: (i) an acceleration of the secured debt, (ii) a request for the opening of insolvency proceedings (including a *procédure de réorganisation judiciaire*) in respect of the relevant principal debtor, or (iii) the opening of such proceedings.

How we can help

Our Finance & Capital Markets team is at your disposal to advise on all aspects of debt restructuring and insolvency, including on reorganisation proceedings subject to the Reorganisation Law_

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