

New law aimed to strengthen Luxembourg's financial collateral framework

UPDATE

Update prepared by Saniyé Tipirdamaz (Luxembourg)

On 22 July 2024, a new law on the transfer of non-performing loans (the **Law**) came into force, to amend and strengthen the 2005 law on financial collateral arrangements (the **Collateral Law**).

The legislative amendments aim to enhance the legal security and attractiveness of Luxembourg's financial collateral framework and ensure that Luxembourg remains a favourable jurisdiction for financing transactions by providing significant protection to creditors.

The Law will provide creditors with a secured position and minimise the risk of financial loss. The lender will also be in a position to grant loans in more favourable conditions.

In cross-border financing transactions, the granting of financial collateral arrangements, such as pledge agreements or transfer of title for security purposes agreements to secure the obligations of the borrower under a loan, is generally required by the lender as a condition to the granting of the loan. The role of the financial collateral arrangements has thus become increasingly important in such transactions.

The Luxembourg legislator implemented [the Directive 2002/47/EC](#) of 6 June 2002 on financial collateral arrangements in the Collateral Law in an extensive way to ensure a high protection to the creditors.

The main features of the Collateral Law are as follows:

- The Luxembourg financial collateral arrangements cannot be challenged in case of bankruptcy or any other insolvency proceedings opened against the collateral provider: the creditors will have priority over all creditors.
- The methods of enforcement of the Luxembourg financial collateral arrangements are very efficient and straight forward: no intervention of a bailiff or a court is required for the appropriation and the sale of the pledged assets.
- The contractual flexibility allowing to enforce the pledge in any event determined by the parties (not necessarily limited to non-payment).

The protection and flexibility offered to creditors by the Collateral Law has been confirmed and recognised by the Luxembourg legislator and the courts several times.

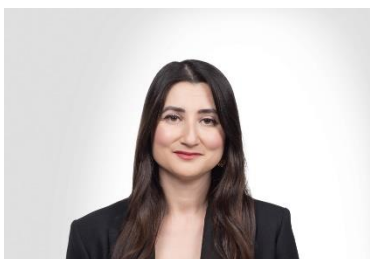
How the Law offer additional protection to the creditors

The amendments made by the Law increase the protection granted by the Collateral Law. The Law clarifies that winding-up proceedings, reorganisation measures and other competitive situations, even if opened in a country outside the European Economic Area, would not challenge any financial collateral arrangements granted under the Collateral Law.

Such clarifications are welcome after the recent decision of the Luxembourg Court of Appeal which ruled that the protection granted to creditors in case of insolvency proceedings opened against the collateral provider were only applicable to proceedings opened in a country of the European Economic Area.

The legislator has thus clarified in the Law that the protection of the Collateral Law is also applicable to insolvency proceedings opened in any countries and then reinforce the protective approach for creditors of the Collateral Law.

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