



Special Feature

Bond Restructuring in Luxembourg

As one of the world's most high-profile stock exchanges, Luxembourg and its legal system are often the backdrop for large bond restructuring processes. But what do these processes entail, and how does an experienced law firm handle them? Here, Anne-Marie Nicolas and Noémi Gémesi from Loyens & Loeff offer their unique insights.

Can you give us some background into the Luxembourg Stock Exchange and your own bond restructuring practice?

The Luxembourg Stock Exchange is the world's leading exchange for the listing of international debt securities and green bonds. Luxembourg holding and finance companies are also incredibly popular with international conglomerates or in LBOs for tax and/or single point of enforcement purposes, including in bond deals. Therefore, bond restructuring processes often involve Luxembourg law aspects.

In that context, Loyens & Loeff Luxembourg regularly advises clients on both the issuer and the creditor/investor side on the restructuring of bonds, including, for instance, in the following landmark bond restructuring deals:

- **Constellation Oil Services Holding S.A.** and the other members of Brazil's Constellation group, a Brazilian oil-and-gas drilling company, in its \$1.5 billion global debt restructuring, including the restructuring of its \$800 million bonds listed on the NY stock exchange;
- The ad hoc group of holders of €350

million New York law-governed senior-secured notes on the restructuring of the **Löwen Play Group**, a major German gaming operator;

- **Corestate**, an investment manager and co-investor with €17.3 billion in assets under management in the core business and manager for the entire real estate value chain, with its bond restructuring process.

How does your team assist in bond restructuring processes?

Our advice generally includes structuring, insolvency, finance and strategic legal advice as to how to handle the bondholders or the Luxembourg issuer company in light of possible restructuring options and security enforcement options, but also the Luxembourg board's liability concerns and duties. We are also often involved in the tax structuring of the warehousing structure and in considering the structuring of exit options.

Consequently, our combined expertise in terms of bond restructurings encompasses legal advice with respect to Luxembourg capital markets, debt restructuring, corporate, finance and tax matters to help our clients navigate the negotiations with the stakeholders,

the relevant board members and/or the litigation risk. New money funding options are varied and range from debt-to-equity swaps, extension of maturity, warrants or hybrid or preferred equity instruments issues, collateralisation of existing notes and/or new loan facilities.

What are the typical Luxembourg key points that are relevant in a bond restructuring process?

Typical key Luxembourg legal points that are often encountered in bond restructurings include the following:

- **Fair treatment of creditors** and how this Luxembourg law principle impacts the restructuring negotiations.

- **The recognition of the UK Scheme or Restructuring Plan and US Chapter 11 proceedings.** The UK and the US insolvency proceedings have their challenges in terms of recognition in Luxembourg (in the case of the UK since, with Brexit, UK court judgments are no longer automatically recognised in Luxembourg) and it is often a question of whether or not we actually need recognition at all or if, in light of the effects of the procedure and the envisaged implementation steps, such recognition is not formally required.

- **Single point of enforcement.** Numerous bond restructurings (as with any other type of debt restructuring involving a Lux security package) use the 'double Luxco' and enforcement of a Luxembourg share pledge as a 'clean' way to transfer control from the bond issuer group to the bondholders. The challenge there is often getting the required majority and instructions and whether this enforcement could conflict with foreign proceedings or, on the contrary, be part of their implementation.



- **Bond issuer board liability.** Depending on the culture of the board and the profile of the bond holders, you may have nominees or executive board members on the board of a bond issuer or guarantor and the negotiations of a restructuring deal with them on board may prove to be challenging or need a lot of support to clarify the risk and potential liability at stake. With bonds listed on the NY stock exchange, there comes the added difficulty of US bondholders typically trying to pin fiduciary duties on a Luxembourg board that they would not have under Luxembourg law, which can lead to many discussions and negotiations, especially when bondholders are trying to guide the board of the issuer in a certain direction not necessarily in line with Luxembourg governance principles.

- **Inside information.** During restructuring negotiations, creditors will have access to non-public commercial information, some of which might qualify as inside information under the Market Abuse Regulation (MAR) in the context of bonds listed in the European Economic Area. Possession of inside information will restrict bondholders from trading their bonds. Breaching these restrictions may result in heavy sanctions and the topic is therefore very sensitive.

What skills does the Loyens & Loeff team bring to such an operation?

One key skill is the ability to navigate

complex restructuring and insolvency scenarios while remaining agile and able to adapt the legal advice to quickly changing and sometimes tense situations while keeping in mind that the goal is (normally) to get to a deal. When acting for the issuer or its board, we also must take the board's potential liability into account. We bring considerable creative expertise in the field of bond restructurings and recognise the specifics of listed bonds and the mindset of bondholders and boards, depending on their corporate culture.

The other key skillset we use is our knowledge of certain foreign markets. Based on precedent experience, we have the ability to compare and clarify the differences in markets, liability standards and corporate governance aspects in both foreign markets (such as the US, the

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UK, Germany and Brazil for instance) and the Luxembourg legal frameworks as well as the practices of the respective courts in these jurisdictions. This also helps in our advising on (litigation) risk assessments in the context of the negotiation with the bondholders.

LOYENS & LOEFF

Loyens Loeff is a leading legal and tax advisory firm headquartered in Rotterdam. With over 1,000 advisors across its Netherlands, Belgium, Luxembourg and Switzerland offices, the firm offers full-service legal advice and specialist support for businesses internationally.



Anne-Marie Nicolas

Anne-Marie Nicolas is a partner at Loyens and Loeff, as well as the head of its Luxembourg Banking & Finance practice and co-head of its Luxembourg Restructuring practice. Her practice focuses on secured lending, including acquisition finance, and real estate. She also handles distressed financings, security enforcements and debt restructurings.



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