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# Opinions in financing transactions: the Luxembourg context



# Local sources of guidance

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- No single source of guidance for opinions
  - French and Belgian law underlie the contractual obligations and corporate law practice
  - A jurisdiction where customarily opinions are a major practice revolving around group/investors' holding companies and their financings
  - Customary market practice approaches do exist
  - Driven by the ***lenders/investors'*** jurisdictions

# Reliance and duty of care

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Typically addressed to:

- Lender(s) or syndication of lenders and limited to addressee
- Bond trustees/underwriters
- International investors (JVs/venture capital)
- Liability is probably based on contractual theory

# Scope

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- Defined as narrowly as possible
- No duty to inform of changes of law
- Opinions narrowly limited to  
Luxembourg law

# Assumption

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- Genuineness of signatures (POAs)/authenticity
- Public records (bankruptcy matters)
- Compliance with foreign law (often documents are governed by foreign law)
- Valid choice of law

# Due diligence and supporting materials

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- Public records (Trade Register) and statutory publications (aka RESA)
- Shareholders' register
- Corporate records such as board minutes and non-published shareholders minutes
- Transaction documents
- Officers certificate - US practice influence

# Core opinions

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- Heavily influenced by US/UK market requirements
- ‘Good Standing’ type opinions
- Share capital of the borrower or issuer
- Power and authority
- Validity, perfection, priority and enforceability of local security documents
- Compliance with local laws
- Enforceability of a foreign judgment
- Non-taxable event

# Qualifications

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- Language (French and German official languages)
- Bankruptcy
- Accuracy of corporate records and public records
- Luxembourg international public order ('ordre public')
- Practical enforcement difficulties
- Conflict with local procedure rules (eg service of process agent/emergency or conservatory matters)
- Flagging of issues



# General observations

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- Move towards a single standard form (contract?) /approach with its own set of skills - experience and negotiation
- Cap on liability?
  - Still uncommon, but negotiable in certain circumstance
  - Justifiable on business and transactional complexity grounds

# Q&A

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## Questions ?

# Contact details

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