

A reinforced Luxembourg Triangle of Security

[European Directive 2001/17/EC](#) on the reorganisation and winding-up of insurance undertakings provides Member States with two methods for the treatment of insurance claims. Since the entry into force of this Directive, Luxembourg has elected to grant insurance claims absolute priority over any other claims against the insurance undertaking.

This right over insurance receivables is sometimes referred to as a "super-privilege". It is a key element in the protection of the rights of creditors under insurance contracts concluded with Luxembourg insurance companies. It allows insurance creditors to exercise claims under their insurance contracts in priority to all other creditors of the insurance company (and in particular employees, shareholders, social security institutions and the State).

In addition, Luxembourg law requires that the insurance company treat the assets representing its insurance liabilities as distinct, and managed separately, from its own assets. These representative assets must be deposited with a custodian bank. A custody agreement binds the insurance company and the bank and must be approved by the Commissariat aux Assurances (CAA) before the deposit of any representative assets. Insurance creditors (policyholders and/or beneficiaries) thus have the status of super-privileged creditors over the segregated assets corresponding to their contracts.

This system of protection for insurance claims is commonly referred to as the "Triangle of Security" because of the involvement of three parties: insurance company, custodian bank and CAA. The Triangle of Security provides a form of legal protection that is unique in Europe and is one of the significant advantages of a life insurance policy concluded with a Luxembourg insurance company.

In the context of financial market risk, [the law of 10 August 2018](#) strengthened the existing framework by further clarifying how the Triangle of Security is to be implemented.

The legislation states clearly that life insurance contracts linked to investment funds, and guaranteed return life insurance contracts, correspond to separate pools of assets. Each of these pools of assets is reserved primarily for the execution of commitments under the corresponding type of contract.

The super-privilege of insurance creditors over the separate assets corresponding to their contracts is now classed as a first ranking claim (*privilège de premier rang*) and, as a result, is strengthened.

Life insurance receivables for which the investment risk is borne by the policyholder (e.g. unit-linked investments) are valued by reference to the number of units held on the day the liquidation is opened. For other types of investment (e.g. guaranteed-capital investments), insurance receivables are equal to the value of the corresponding technical provisions on the day the liquidation is opened.

The protection of consumers' rights, and in particular the prospect of compensation within a reasonable time frame, is further enhanced by the option to satisfy insurance claims by transferring some or all assets in specie rather than transferring the proceeds of their liquidation.

* * *