

# Fund Finance Friday



## Searching in CayLux - What Can Be Found?

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As transactions near the finish line, two of the most common 'punch list' items that remain are often: (i) lien and court searches; and (ii) good standing certificates, in the relevant jurisdictions.

As what can be obtained - and who can obtain it - rank amongst the most frequently asked questions ahead of closing (and in particular for short-fuse amendments and extensions), what follows is a quick cheat sheet for CayLux with answers to these questions.

### Cayman Islands

#### **Court Searches**

In Cayman, court searches can be obtained quickly and without issue. Searches are conducted against the records of the Grand Court of the Cayman Islands and are now available electronically, meaning turnaround times are same day (and often within a matter of minutes).

Either borrower's or lender's counsel can obtain these searches directly, although they are rarely delivered as standalone closing deliverables. Instead, the results are typically folded into Cayman legal opinions, with counsel issuing the opinion confirming as a factual matter that no relevant proceedings have been uncovered by the searches as at a specified time and date.

It is worth noting, however, that the scope of a Cayman court search is inherently limited. The search reflects proceedings that have been formally filed with the court at the time of the search. As such, while it would reveal, for example, the presentation of a winding-up petition or other court-based insolvency proceedings, it would not capture winding-up or liquidation processes that can be commenced out of court, such as a voluntary winding-up or liquidation initiated by LPs or shareholders.

#### **Lien Searches**

There is no filing system in Cayman for security interests relevant to fund finance deals and, accordingly, no lien searches can be run in Cayman.

As a result, Cayman due diligence in this area is limited to delivery of the register of mortgages and charges or register of security interests of the relevant entities for review, where applicable, rather than through any public search equivalent to a UCC or similar lien search in onshore jurisdictions.

### **Certificates of Good Standing**

Certificates of Good Standing (**COGS**) in the Cayman Islands are straightforward to obtain but only an entity's registered office provider can request the certificate. This provider is usually an affiliate of the borrower's Cayman counsel and so the task of obtaining the COGS is usually earmarked for them.

Turnaround times are often same day or next day, although this can vary depending on registry volumes and whether express service is requested.

### **Luxembourg**

#### **No Good Standing and Court Searches – RCS and Negative Certificates Instead**

An important distinction with Luxembourg entities is that there is no "certificate of good standing" that can be obtained and no relevant 'court search' that is run.

Instead, extracts of the relevant entities' details are ordered from the Luxembourg Business Registers (LBR), being:

- The Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés de Luxembourg – RCS*) which issues excerpts (*extraits*) confirming the main information of the Lux entity including its name, date of establishment, registered address, and current status; and
- The Luxembourg Insolvency Register (*Registre de l'insolvabilité*) which issues the 'negative certificates' being certificates on non-inscription of judgments or administrative dissolution without liquidation. These certificates confirm that no judicial insolvency decision or administrative dissolution without liquidation procedure has been registered with the RCS by a certain date (but not whether proceedings have been initiated to obtain a judicial insolvency decision).

Both RCS excerpts and 'negative certificates' can be obtained online by either Luxembourg counsel very quickly.

Together these effectively act as a 'good standing' in Luxembourg - assuming that they do not uncover any unexpected details.

### **Lien searches**

Similar to Cayman, there is no filing system in Luxembourg for security interests relevant to fund finance deals and accordingly no lien searches can be run in Luxembourg.

So now you know what you are searching for in Cayman and Lux and who can do the relevant searching!