Luxembourg amends the existing rules on public debt issuances to bolster economy amid the COVID-19 crisis

Luxembourg is undoubtedly one of the most successful financial centres in Europe. Nevertheless, aside from the banking and fund industry, the contribution of local undertakings to the creation of wealth and jobs in the country deserves to be highlighted, since these businesses have increasingly become important players in the Luxembourg economy.

In the wake of the COVID-19 crisis, the Luxembourg lawmaker and the government have adopted a number of new laws and regulations aimed at safeguarding the national economy (and in particular its small and medium-sized businesses).

To that end, the Chamber of Deputies has passed a special law which, among other things, entrusts the Finance Minister ("**Minister**") with additional powers to authorise debt issuances by the State of a maximum overall amount of EUR 3 billion in 2020 and subsequent years.[1]

In the same vein, a new Grand Ducal regulation, which was published on 18 April 2020[2], defines the new conditions and modalities for debt issuance by the Luxembourg State (the "**Regulation**").[3]

The new set of rules introduced in the Regulation aims to modernise the existing framework governing public debt issuances, which was deemed to no longer be in line with market practices and the State's cash requirements. As a consequence, the former regulation of 7 February 2013, which defined the conditions and modalities for public debt issuances, was repealed following the entry into force of the Regulation.

The Regulation provides that the Minister is authorised to issue debt on behalf of the State in one of two forms:

- negotiable instruments admitted on a regulated market or a multilateral trading facility (including bonds and treasury certificates); and
- non-negotiable instruments entered into with a professional of the financial sector or an international institution (including loans or account credit facilities).

All State debt falling within the ambit of the Regulation must be governed by Luxembourg law. Furthermore, any dispute arising between the State and the investors falls exclusively within the remit of the Luxembourg courts.

Negotiable instruments can be issued on a stand-alone basis or by tranches. The Regulation also allows the issue of fungible tranches. Negotiable debts take a dematerialised form and are represented by a book entry in a securities account. For each debt issue (or any tranche thereof), a global certificate is issued, signed by the Minister or his delegate and countersigned by the Treasury Director. This certificate is then deposited with an authorised professional of the financial sector in Luxembourg, to be designated by the Minister.

The powers conferred on the Minister under the Regulation include the definition of the specific terms and conditions of the negotiable instruments to be issued (such as their nominal value, their denomination, the applicable nominal interest rate, their subscription price, etc.), which must be published in the Luxembourg official gazette. The financial services concerning the negotiable instruments must be entrusted to an authorised professional of the financial sector established in Luxembourg. Finally, the Minister must ensure that the negotiable instruments are admitted to official listing on the Luxembourg Stock Exchange.

Negotiable instruments must be placed with investors by way of public auction or through one or several professionals of the financial sectors designated by the Minister. These professional intermediaries may receive a commission for their services, whose amount is to be set by the Minister. The administrative and technical requirements applicable to the public auction process, as well as the identity of the professionals of the financial sector which are admitted to the public auction, will be determined by the Minister.

The new rules were put into practice shortly after its entry into force. The Minister made used of his special powers and adopted on 21 April 2020 a ministerial[4] decree defining the conditions under which the State could issue two tranches with a total nominal value of EUR 2.5 billion. On 28 April 2020, the Luxembourg State announced that the entirety of the bonds had been subscribed by institutional investors in Luxembourg and other reputable investors from the Eurozone, the United Kingdom and Switzerland[5]. Owing to its triple-A notation, which boosted investor confidence, Luxembourg now has an additional cash buffer which will contribute to the protection of the national economy.

[1] Article 6 (2) of the Law of 18 April 2020 establishing a guarantee regime in favour of the Luxembourg economy in the context of the COVID-19 pandemic. This law provides, among other things, for the creation of a loan guarantee scheme to support undertakings which face financial difficulties owing to the COVID-19 crisis.

[2] The Regulation entered into force on the same day.

[3] Grand Ducal Regulation of 18 April 2020 defining the terms and conditions for debt issuance by the State and repealing Grand Ducal Regulation of 7 February 2013 defining the conditions and modalities for debt issuance by the State, *Mémorial A*, No. 308 of 18 April 2020.

[4] Ministerial Decree of 21 April 2020 setting out the specific conditions of bonds to be issued on 28 April 2020, *Mémorial A*, No. 312 of 22 April 2020.

[5] "*L'État luxembourgeois a émis un emprunt de 2,5 milliards d'euros à taux négatif pour faire face au COVID-19*", press release published on 22 April 2020

(https://gouvernement.lu/fr/actualites/toutes_actualites/communiques/2020/04-avril/22-etat-emprunt-covid19.html)

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