

CORPORATE & M&A

News from Luxembourg

MOLITOR



A SIMPLIFIED VERSION OF THE LIMITED LIABILITY COMPANY: A BOOST FOR START-UPS AND SMALL SIZE ENTREPRENEURS

The Luxembourg Government finally decided to follow in the footsteps of its European neighbours and to simplify the formalities relating to company creation for SME entrepreneurs.

Over the past few years, Member States of the European Union, such as France, Germany, Belgium and the Netherlands, have taken measures to encourage entrepreneurship by bringing more flexibility to the processes of company creation. Similarly, in 2011, the Luxembourg Chamber of Commerce recommended the creation of a simplified limited liability company with, among others, a symbolic share capital of EUR 1.

In this respect, on a proposal of the Minister of Justice Félix Braz, the Luxembourg Government passed Bill No. 6777 on 21 January 2015 (the “**Bill**”), which was introduced in the Chamber of Deputies for approval on 2 February 2015.

This Bill modifies both the law of 10 August 1915 on commercial companies and the law of 19 December 2002 on the Trade and Companies Register as well as company accounts and annual financial statements.

The Bill institutes a simplified and complementary version of the limited liability company (the “S.à.r.l.-S”). It was strongly inspired by German and Belgian laws, notably by the Belgian law of 15 January 2014, which improved the statute of the “SPRL-Starter” (private limited liability company).

As in Germany and Belgium, the Luxembourg Government decided to create a simplified version of the existing limited liability company rather than a new form of company, so provisions applying to the existing limited liability company still apply to its simplified version, unless the law provides otherwise.

The Luxembourg Government hopes that, once approved, this law will encourage the creation of new companies and will eventually stimulate growth, investments and employment.

Target: Small entrepreneurs

The intention of the government is to support entrepreneurs (natural persons) with limited means, for whom the provision of a minimum required capital represents an obstacle to the creation of their company and whose commercial activities (mostly provision of services) do not require much start-up capital.

For this reason, the Bill makes it quicker and easier to set up a company, as well as lowering the requirements set by the Law of 10 August 1915 on commercial companies regarding the subscription and the payment of the share capital.

Simplified procedure

The Bill provides for the possibility to create a company by private deed and with a capital share of one euro.

The Bill makes it possible for entrepreneurs to incorporate an S.à.r.l.-S either by private deed or notarial deed, in order to make the procedure more timely and efficient. In both cases, the deed will have to be fully published. However, entrepreneurs wishing to create an S.à.r.l. in its classic form still have to do so by notarial deed.

Once the Bill is enacted into law, entrepreneurs can consult a legal adviser to prepare appropriate and specific legal articles of association. If they don't wish to consult a legal adviser, they can ask one of the professional chambers (Chambre de Commerce or Chambre de Métiers) for a template.

The Bill not only makes entrepreneurs more independent, but it also enables them to create their S.à.r.l.-S with a share capital ranging from a minimum of EUR 1 to a maximum of EUR 12,394.68. The share capital must be fully subscribed and paid-up at the moment of incorporation.

Particular obligations

The Bill also provides protection for the

creditors of the entrepreneur who must withhold 5% of the annual net profit in order to constitute a reserve. Such an obligation will remain until the reserve together with the share capital amount reaches EUR 12,394.68, in other words, until the sum of the capital and the reserve equates to the minimum required amount of share capital for the constitution of a classic limited liability company (S.à.r.l.). This is in addition to the obligation for the "common" S.à.r.l.s to constitute a legal reserve representing up to 10% of the share capital, by withholding 5% of the annual net profit.

Such an obligation shows that, although the Government did not set a maximum duration for the reserve to reach the minimum share capital of a "common" S.à.r.l., this kind of company is transitional and intended to become an S.à.r.l. once the amount of the minimum share capital is reached, and if its shareholders so wish.

In addition, the company name of a simplified limited liability company must be followed by the words "simplified limited liability company" or by the abbreviation "S.à.r.l.-S". These words must appear on all documents produced by the company (deeds, publications, letters, invoices, etc.).

Restrictive conditions

The corporate object of an S.à.r.l.-S is restricted to the exercise of activities for which a business license (*"autorisation d'établissement"*) is necessary from the Ministry of Middle Classes. The Government justifies this restriction by arguing that the purpose of the Bill is to address the needs of specific sectors. This form of company is therefore not relevant for companies with purely holding and financing activities.

Moreover, only natural persons can be shareholders of a simplified limited liability company. A legal person cannot hold shares in such a company. According to the Government, the goal of this limitation is to avoid abuses and corporate chains.

For the same reason, although these companies can have one or several members, one individual cannot, unless the shares are transferred because of a death, hold shares of more than one simplified limited liability company. All individuals so doing will become jointly and severally liable for all obligations arising after they acquired shares in the company until these provisions no longer apply or until the publication of the company's dissolution.

To be continued...

In summary, the Bill promotes company creation and intends to limit any potential abuse by setting substantial restrictions. The Bill was introduced in the Chamber of Deputies on 2 February 2015 and can still be amended before being voted...

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