

News from Luxembourg



"RESA" - Amendments to the legal and regulatory framework applicable to the Trade and Companies Register and the legal publication of companies and associations

30 May 2016 saw the publication of:

- (i) the law of 27 May 2016 (the "**Law**") modifying the regime of legal publication of companies and associations;
- (ii) the Grand-Ducal Regulation of 27 May 2016 (the "**Grand-Ducal Regulation**") modifying the Grand-Ducal Regulation of 23 January 2003 implementing the Law of 19 December 2002 on the Trade and Companies Register and the accounting and annual accounts of undertakings (the "**Law of 19 December 2002**"), and the Grand-Ducal Regulation of 9 January 1961 concerning the three official gazettes of the *Mémorial*; and
- (iii) the ministerial regulation from the Ministry of Justice of 27 May 2016 determining the criteria of presentation and form of the documents to be published in the *Recueil électronique des sociétés et associations* (the "**Ministerial Regulation**").

On 24 March 2016, the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés* – "**RCS**") issued Circular RCSL 16/01 concerning the main amendments to the legal and regulatory framework applicable to the Luxembourg Trade and Companies register (the "**Circular**"), which describes the main changes under the Law, the Grand-Ducal Regulation and the Ministerial Regulation.

The Law, the Grand-Ducal Regulation and the Ministerial Regulation came into force on **1 June 2016**, except for (a) the registration with the RCS of common funds set up before 1 June 2016, which must be registered with the RCS by 1 January 2017 and (b) the rules regarding the filing fees for the late filing of the annual accounts, which will come into force on 1 January 2017.

An overview of the main changes provided for under the Law, the Grand-Ducal Regulation and the Ministerial Regulation is set out below.

1. RESA

An electronic gazette, RESA (*Recueil électronique des sociétés et associations*), replaces the *Mémorial C*.

The Law provides that information filed with the RCS must be published within fifteen days from filing, except for convening notices to general meetings of shareholders. The Circular clarifies that (i) in principle, the date of filing corresponds to the date of publication and (ii) if the applicant does not want the information filed with the RCS to be published in the RESA on the same date, it can choose to postpone the date of publication within the fifteen-day period.

In respect of the publication of convening notices to general meetings of shareholders, the Law specifies that the applicant must indicate the two dates of publication of the convening notice. For Luxembourg companies whose shares are admitted to trading on a regulated market established or operating within a Member State of the European Union and those other Luxembourg companies that have opted for the application of the law of 24 May 2011 regarding the exercise of certain rights of shareholders at general meetings of listed companies, the convening notice must still be published once within the timeframe required by that law, and therefore, only one date of publication must be indicated.

As a transitory measure, all documents filed with the Ministry of State (*Service Central de Législation*) before 1 June 2016 but not yet published in the *Mémorial C*, must be published in the *Mémorial C* within three months of the Law coming into effect.

Information published in RESA is available free of charge on the website of the RCS (www.rcsl.lu) in the section “Recueil Electronique des Sociétés et Associations”. The archives of the *Mémorial C* will also remain available online.

2. Application procedure

The following changes simplify the filing and publication procedure.

The Law provides that, for the purpose of the registration of a company with the RCS, it only has to provide the registration number with the RCS of any shareholder, the person(s) responsible for the management or supervision and the person(s) responsible for the supervision of the accounts, to the extent that any such person has the obligation to be registered with the RCS, provided that any such registration is required by law. The Circular specifies that any such person must be registered first with the RCS before the registration of the company may take place. For example, a Luxembourg company which is a shareholder of a private limited liability company (*société à responsabilité limitée*) must be registered first with the RCS before the private limited liability company can be registered with the RCS.

The Circular specifies that this new procedure set out by the Law is applicable only to legal entities which are the shareholders, the person(s) responsible for the management or supervision and the person(s) responsible for the supervision of the accounts registered with the RCS under the procedure applicable under the Law pursuant to which information to be provided has been harmonised and is referred to as “block of information” (*“information en bloc”*). In respect of persons who provided information to the RCS before 1 June 2016, the “old” procedure is applicable, and hence, full information will still need to be provided to the RCS.

A legal entity will also not be required to prepare the excerpt to be published with RESA in respect of (i) resignation of the legal representatives and the person(s) responsible for the supervision of the accounts, (ii) the cessation of domiciliation made under the law of 31 May 1999 governing the domiciliation of companies, as amended, and (iii) the

appointment and the termination of office of the persons responsible for the management, the supervision or the liquidation, the persons responsible for the supervision of the accounts and the depositary of bearer shares. Any such excerpt will be prepared and subsequently published by the RCS.

Notices regarding the publication by reference of information, such as the reference of the publication of the annual accounts, must also be prepared and subsequently published by the RCS.

The Ministerial Regulation further specifies that any change regarding the particulars, such as a name change, relating to the persons responsible for the management, the supervision or the liquidation, the persons responsible for the supervision of the accounts and the depositary of bearer shares, which are registered with the RCS, of a legal entity registered with the RCS must be published by excerpt in the RESA in connection with the registration of that change by such person. As stated above, the excerpt will be prepared and published by the manager of the RCS. Therefore, no steps are necessary by the legal entity in this respect.

3. New registration regime for common funds (FCP)

The Law provides for the mandatory registration with the RCS for common funds as of 1 June 2016.

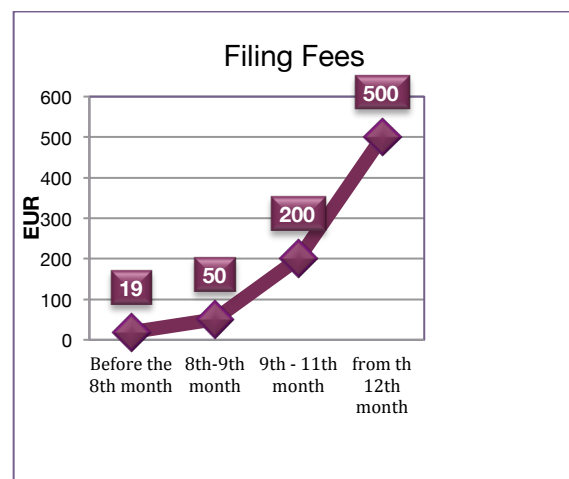
Each common fund registered with the RCS will receive a registration number and a new Section K in the RCS is specifically dedicated to common funds.

These changes are of immediate application to common funds set up since 1 June 2016, which will need to register with the RCS and also provide it with the management regulation (*règlement de gestion*) of the fund.

Common funds set up before 1 June 2016 are also required to register with the RCS. The Law provides for a transitory period requiring them to register with the RCS by 1 January 2017.

4. Increase of filing fees for late filing of annual accounts

If the financial statements are filed at least one month after the time period required by the Law of 19 December 2002, which is seven months after the end of the last financial year, then unless such late filing is caused by an event of *force majeure*, the filing fees of the financial statements are increased as set out in the below table below.



* Months following the end of the financial year.

Those additional filing fees will be applicable **from 1 January 2017**.

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