

Amendments to the draft bill on the patrimonial foundation

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On 5 June 2014, the law bill No. 6595 on the patrimonial foundation (see, our Newsletter of August 2013) has been amended and a coordinated version has been published. The 15 amendments to the original law bill include the comments made by the Finance and Budget Commission (Commission des Finances et du Budget) and by the State Council (Conseil d'Etat). By these amendments, the Finance and Budget Commission intends to further clarify and adapt the status of the future Luxembourg patrimonial foundation ("LPF") in relation to other vehicles.

The first important clarification concerns the fact that the LPF may not be incorporated by testament, meaning after the death of the founder, and that the public order provisions regarding the legal reserve of an estate (reserve héréditaire) are not affected by the incorporation of the LPF.

The Finance and Budget Commission also specifies in its statement attached to the amendments that personal rights of the founder shall not form part of its estate in order to avoid that its heirs change the beneficiaries of the LPF in case the founder has reserved its right to do so.

Upon demand of the State Council, the law bill now defines the term "patrimonial entity" (entité patrimoniale) and provides that statutory rules may not derogate from the articles of incorporation of the LPF in order to avoid any ambiguity.

For more transparency and legal certainty, it has also been clearly stated that the LPF may be the settler or beneficiary of trust agreements. The transfer of property and movable and immovable property rights has to be registered, even in the case of death or dissolution of the founder. This clarification was necessary since donations can only be made between existing persons.

Another important clarification concerns the tax treatment of payments to beneficiaries or holders of certificates. Indeed, these payments will not be considered revenues under tax aspects for as long as they are a counterpart of a reduction of the initial or subsequent endowment of the LPF.

Due to these amendments, the legislative procedure will be extended since all concerned parties will have to be contacted again.

Your contact(s)



Chan PARK

Partner

Avocat à la Cour, Member of the Luxembourg Bar, 2014 and the Brussels Bar 1999

chan.park@molitorlegal.lu