

Reform of Luxembourg Company Law

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On 13 July 2016 the House of Representatives (Chambre des Députés) passed an important set of amendments to Luxembourg company law, by approving the long-awaited draft bill of law No. 5730. This bill was adopted on 18 July 2016. The new law, yet to be published in the Luxembourg Official Gazette, impacts mainly the Luxembourg Civil Code, the Law of 10 August 1915 concerning commercial companies and the Law of 19 December 2002 concerning the Trade and Companies register (the "Law").

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The amendments are designed to reinforce the original aim of Luxembourg company law, i.e. ensuring contractual freedom, but also to provide additional instruments to the economic operators. More specifically, the legislator highlighted that a lack of regulation does not necessarily correspond to extra freedom and initiative of private parties, but rather it creates legal uncertainties. To this end, the amendments mainly aim at regulating legal mechanisms already familiar to market practice.

The rules applicable to Luxembourg's main corporate structures (i.e. *sociétés anonymes* and *sociétés à responsabilité limitée*) have undergone important changes; in addition, a new type of company is introduced to the legal framework: the simplified public joint stock company (*société par actions simplifiée*).

The main changes are as follows:

1. GENERAL CHANGES CONCERNING ALL COMPANIES

- New regime of invalidity of the resolutions taken by the general meeting of the shareholders
- Possibility for any type of company to issue bonds
- Express recognition of the *conventions de portage*

2. SOCIÉTÉ ANONYME

- Decrease of the minimum share capital to EUR 30,000
- Issuance of shares below par value
- Express recognition of lock-up clauses
- Additional flexibility to shares with no voting rights

- Possibility for the board of managers to delegate certain managing powers to an executive board (comité de direction)
- Express recognition of shareholders' agreements (pactes d'actionnaires)
- Repeal of the rule of unanimous vote of the shareholders to change the nationality of the company

3. SOCIÉTÉ À RESPONSABILITÉ LIMITÉE

- Increased maximum number of shareholders (up to 100)
- Decrease of the minimum share capital to EUR 12,000
- Issuance of redeemable shares
- Meetings of the board of managers via videoconference
- Express recognition of shareholders' agreements (pactes d'actionnaires)
- Express recognition of interim dividends
- Repeal of the rule of unanimous vote of the shareholders to change the nationality of the company

The amendments will enter into force three days after the date of the publication of the Law in the Luxembourg Official Gazette (Mémorial A). The publication is expected in July/August 2016.

All companies incorporated after the amendments become law will be immediately submitted to the new regime.

For existing companies, the Law provides an interim regime. Existing companies have 24 months from the publication of the law in the Luxembourg Official Gazette to adjust in full to the new legal framework; during this timeframe, the current rules still apply.

In particular, the articles of association of Luxembourg companies must be amended within this 24-month period to comply with the provisions of the Law, following the current rules for the amendments to the articles of association (form and publication requirements). Only where the articles of association refer to a provision of the company law that has been repealed and is no longer applicable, can the relevant changes - limited to an update of the reference to the repealed provision - be approved by the management body (i.e. no shareholders' approval is required).

In this context, it is extremely important to point out that - once the 24-month period has elapsed - any clause of the articles of associations not compliant with the Law will be deemed unwritten and the default legal rules will apply. Therefore, Luxembourg companies and their in-house legal teams should proceed within the above 24-month time frame (at the latest), to a full review of the articles of association, to avoid any undesirable consequence such as having a certain provision of the articles which has been approved by the shareholders replaced by a default rule.

MOLITOR's Corporate & M&A team will be pleased to assist Luxembourg companies and their in-house legal teams in the assessment of their company's compliance with the new rules.

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