

Deloitte regulatory news alert

Reform of the Luxembourg company law is voted

14 July 2016

After several years of discussions, the Luxembourg Parliament adopted yesterday the draft bill 5730 (the “New Commercial Law”) updating among others (i) the provisions of the Luxembourg Civil Code relating to all legal entities and (ii) the Law of August 10th, 1915 as amended from time to time relating more specifically to commercial companies.

General overview

- The three aims of the Luxembourg legislator may be summarized as follows:
- Codify certain legal practices well established in Luxembourg;
- Modernize the legislation related to the legal entities from inception to dissolution and liquidation;
- Re-inforce the competitiveness of the Luxembourg market by adoption of new rules well designed for foreign investors.

In a nutshell, the New Commercial Law:

- Introduces the possibility for a Luxembourg private limited liability company (S.à r.l.) to (i) set up an authorized share capital, (ii) issue debt securities to the public (but not shares or beneficial parts), (iii) issue tracking shares, (iv) issue shares of unequal value, (v) issue bonds and debt securities under a new favorable regime.
- Introduces the possibility for Luxembourg public companies limited by shares (SA) to (i) issue shares at below par value (under certain conditions) (ii) issue tracking shares, (iii) issue non-voting shares with more flexibility, (IV) introduce specific provisions restricting the transfer of shares, (v) issue free shares to employees.
- Recognizes the issuance of bonds by all Luxembourg entities.
- Introduces a new form of company: the “société par action simplifiée”. While based on the rules governing the Luxembourg public company limited by shares, the articles of association of this new entity can freely determine how the entity may work and its corporate governance may be organized.

The entering into force of the New Commercial Law

The Luxembourg legislator introduces a transitional period for the entering into force of the New Commercial Law once duly published meaning that:

- Luxembourg entities – and more generally the new projects/structures –to be set up after this date will have to comply with the terms of the New Commercial Law;
- Existing companies will have two years to amend – if necessary – their bylaws to comply with the mandatory terms of the New Commercial Law. Until then, the current bylaws remain in force. After this transitional period in case of conflict, the new rules under the New Commercial Law will be directly applicable and the “old” provisions will be considered as void.

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