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New Luxembourg law eliminating certain inconsistencies and uncertainties in the law on commercial companies

On 19 July 2023, a new law was adopted by Luxembourg Parliament that eliminates certain inconsistencies or uncertainties in the law dated 10 August 1915 on commercial companies, as amended in particular by the law of 10 August 2016 (bill of law n°8007).



General

The purpose of draft bill 8007 was to correct certain errors, mostly of an editorial nature, that crept into the amended Luxembourg law of 10 August 1915 on commercial companies (the “**1915 Law**”), the law of 19 December 2002 on the Register of Commerce and Companies and annual accounts (the “**RCS Law**”), as amended, the law of 24 May 2011 on certain shareholder rights at general meetings of listed companies and article 1853 of the Civil Code, following the entry into force of the law of 10 August 2016 modernising the 1915 Law.

In addition, the practical implementation of the new provisions of the 1915 law following its modernisation had revealed certain inconsistencies or uncertainties. It seemed useful to address those through draft bill 8007 without, however, making changes of a substantial nature.

The new law, voted on 19 July 2023, is dated 7 August 2023 and published on 18 August 2023.

Main amendments to the 1915 Law

The key updates include:

- Shares for which voting rights have been suspended or waived shall not be taken into account to calculate the quorum and majority of a shareholders' meeting, in the same way as not yet cancelled repurchased shares.
- The procedure newly adopted in 2016 for approval of a transfer of shares in the capital of a private limited liability company (*société à responsabilité limitée*) ("Sàrl") to a third party has been updated in order to (i) to avoid giving a veto right to the seller that is incompatible with the closed character of an Sàrl and pursuant to which, the seller would have been able to impose a new third party shareholder on the company and the remaining existing shareholders and (ii) specify that any repurchase of shares made by the company in accordance with article 710-12 of the 1915 Law may be accompanied with a share capital reduction or not.
- Inconsistencies regarding the provisions applicable to an Sàrl with a single shareholder existed since the 2016 Law. It has been clarified that an Sàrl with a single shareholder:
 - can organise a shareholders' meeting with its shareholder participating remotely;
 - can transfer its registered office within the same municipality by a decision of its board of managers;
 - can make use of an authorised capital clause and include it in its articles of association; and
 - is not obliged to comply with the approval procedure provided for by article 710-12 of the 1915 Law for any transfer of shares by the single shareholder to a third party.
- The 2016 reform abandoned the double majority requirement for amendments to the articles of association of an Sàrl in article 710-26 of the 1915 Law, stipulating that decisions are taken, unless otherwise provided for in the articles of association, by shareholders representing three-quarters of the share capital. However, this double majority requirement still appeared in article 1100-2 of the 1915 Law with regard to the determination of the liquidation method and the appointment of the liquidator. This contradiction has been remedied by aligning article 1100-2 for Sàrls with the majority rules applicable to amendments to the articles of association, as set out in article 710-26.

- The management bodies of a Luxembourg simplified limited company (*société par actions simplifiée* or "SAS") were omitted to be included in article 1400-6 of the 1915 Law. This has been rectified and such managing bodies are now also subject to the 5-year statute of limitations period just like any management bodies of any other type of company.

Entry into force

The new law entered into force on the fourth day following its publication on 22 August 2023.

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