

## Newsflash Luxembourg

# Adoption by the Chamber of Deputies of the law on the *Société d'Impact Sociétal*

The law on the *Société d'Impact Sociétal* (the “**SIS**”) was adopted on 23 November 2016 by the Luxembourg Chamber of Deputies (the “**Law**”) and will come into force after its publication which is expected in the coming weeks.

The Law introduces a favourable legal environment for the development of businesses which transcends the classic division between the profit-making commercial sector and the non-profit sector.

This flashnews aims to give you an overview of the Law, we remain available to provide you with more detailed information.

### I. Conditions to become a SIS

A SA, a SARL or a Cooperative company may apply for an agreement from the Minister in charge of Social and Solidarity Economy (the “**Minister**”) allowing such company to become a SIS to the extent that it meets the 4 following conditions:

- it carries-out on a continuous basis an activity of production, distribution or exchange of goods or services;
- it satisfies primarily at least 1 out of the 2 criteria below:
  - a) it aims to bring support to people in a fragile situation (i.e. disabled people, the elderly, people in precarious situations...) and who may either be employees, clients, members or beneficiaries of the SIS;
  - b) it aims to contribute to the preservation and development of social ties, fight against social exclusion/marginalisation and health, social, cultural, economic or gender gaps, maintain or reinforce territorial cohesion, participate in the protection of the environment or develop cultural, creative, educational or lifelong learning activities;

- it be independently managed which requires that it shall be able (i) to choose and revoke the members of its governing bodies and (ii) to control and organize all of its activities.
- It undertakes to reinvest at least half of its profits in maintaining or developing its activities.

The Minister, assisted by an advisory committee for SIS, supervises the companies approved as SIS and may revoke an agreement if the above legal requirements are no longer met.

The articles of association of the SIS will have to indicate the means by which its corporate object will be reached and provide performance indicators allowing to verify the achievement of such object.

### II. Specific rules applying to SIS on SIS

- the share capital of the SIS shall be represented (i) by at least 50% of impact shares (*parts d'impact*) which do not allow their holders to benefit from the profits generated by the SIS and (ii) for the remaining part by performance shares (*parts de rendement*) which entitle their holders to the profits of the SIS to the extent that the corporate object of the SIS is reached;
- the profits allocated to the impact shares of the SIS shall be exclusively for the achievement of the corporate object and shall be fully reinvested in the preservation and the development of the activity of the SIS;
- the SIS is not authorised to issue debt instruments to its shareholders. The compliance to such obligation will have to be certified annually by an independent auditor (*réviseur d'entreprises agréé*);

- the SIS will have to adopt a remuneration policy and the salaries to be paid to the SIS' management will have to be capped;
- the annual accounts of the SIS will have to be audited by an independent auditor (*réviseur d'entreprises agréé*) and the SIS will have to establish an extra-financial impact report intended for the SIS' shareholders;
- in case of liquidation (voluntary or judiciary) the remaining liquidation proceeds remaining will be assigned to (i) another SIS with similar activities as a donation, or (ii) a Luxembourg foundation or an ASBL of public interest;
- the SIS is submitted to the tax rules applicable to commercial companies and, hence, to VAT, municipal tax and business tax. This is to avoid any unfair competition by the use of a SIS;
- will only be tax deductible the donations made to SIS having a capital represented in its entirety by impact shares.



### Selim Souissi

Avocat (Chalon-sur-Saône Bar)  
Partner  
Luther S.A.  
Luxembourg  
Phone +352 27484 1  
selim.souissi@luther-lawfirm.com



### Yann Spiegelhalter

Avocat à la Cour  
Luther S.A.  
Luxembourg  
Phone +352 27484 1  
yann.spiegelhalter@luther-lawfirm.com

#### Imprint

Luther Rechtsanwalts-gesellschaft mbH, Anna-Schneider-Steig 22,  
50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110,  
contact@luther-lawfirm.com

*Editor:* Eric Sublon, Luther S.A., Aerogolf Center, 1B, Heienhaff,  
L-1736 Senningerberg, Phone +352 27484 1, Fax +352 27484 690,  
eric.sublon@luther-lawfirm.com

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