

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. It 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 public limited company (SA), a limited liability company (SARL) or a cooperative company may apply for an approval from the Minister in charge of Social and Solidarity Economy (the “**Minister**”) allowing such company to become a SIS to the extent that the said company meets the 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, adherents 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 means 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 on SIS, supervises the companies approved as SIS and may revoke the approval granted to the SIS if the above legal requirements are no longer met.

The articles of association of the SIS will have to indicate precisely its corporate object and provide performance indicators allowing to verify the achievement of such object.

II. Specific rules applying to SIS

- the share capital of the SIS shall be represented by registered shares having a nominal value divided into (i) impact shares (*parts d'impact*) representing at least 50% of the share capital and which do not allow their holders to benefit from the profits generated by the SIS and (ii) performance shares (*parts de rendement*) for the remaining part. Conversion of performance shares into impact shares is always permitted but not the other way around;
- the profits allocated to the impact shares 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 shareholders of the SIS may resolve to distribute dividends to the holders of the performance shares provided that the corporate object of the SIS is reached;
- the annual accounts of the SIS will have to be audited by an

independent auditor (*réviseur d'entreprises agréé*) who will in particular certify the composition of the share capital of the SIS;

- the shareholders of the SIS shall be provided with an annual report on the extra-financial impact;
- the SIS is not authorised to borrow from its shareholders or to issue debt instruments to them. The compliance to such obligation will have to be certified annually by the independent auditor;
- the remuneration to be paid to the salaries of the SIS are capped;
- in case of definitive revocation of the ministerial approval the SIS will be liquidated;
- in case of liquidation (voluntary or judiciary) the remaining liquidation proceeds remaining will be assigned (i) as a donation to another SIS with similar activities, or (ii) to a Luxembourg foundation or a public interest non-profit association ;
- a SIS having a share capital represented in its entirety by impact shares (*parts d'impact*) will under certain conditions not be submitted to certain taxes. Moreover the donations in cash made to such SIS are tax deductible.



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