

News Flash

Modernization and competitiveness of the Luxembourg market: adoption of the draft law 5730

After several years of discussions, the Luxembourg Parliament just voted the draft law (Projet de loi) 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.

I/ 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.

II/ 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.

III/ How D.Law may assist you

This New Commercial Law may have a significant impact on the structures, their by-laws and their contractual documentation (JVs, shareholders' agreements etc.) in place as well as on the on-going projects: some instruments/possibilities which were not known or recognized in Luxembourg yesterday are now available.

We will be more than happy to discuss with you the new opportunities this New Commercial Law may offer as well as to review your existing structure and suggest – to the extent required - some amendments/adjustments on the structure itself and the contractual instruments in force to ensure full compliance with these new requirements.

Thanks to our expertise in commercial Law, our pragmatic approach and our cross-border experience, we are ready with you to take on this challenge of modernity. So do not hesitate to contact us for any questions you may have.

Key contacts:

Thomas Held

Partner – Head of Knowledge

Direct: +352 270 477 002

Mobile: +352 661 452 355

theld@dlaw.lu

Jean-Philippe Drescher

Partner

Direct: +352 270 477 123

Mobile: +352 621 492 495

jpdrescher@dlaw.lu

François Lerusse

Partner

Tel/Direct: +352 27047 7011

Mobile: +352 661 452 626

flerusse@dlaw.lu

Ingrid Dubourdieu

Partner

Direct: +352 270 477 405

Mobile: +352 661 452 047

idubourdieu@dlaw.lu

<http://www.dlaw.lu/>

D.Law

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D.Law | Aerogolf Bloc A, 1, rue Heienhaff

L-1736 Senningerberg, Luxembourg

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