

BSP Newsflash

26.01.2021



**FINE-TUNED
LEGAL ADVICE
MADE IN
LUXEMBOURG**

NEW LUXEMBOURG LAW ALLOWS ISSUANCE OF DEMATERIALIZED SECURITIES USING DISTRIBUTED LEDGER TECHNOLOGY (DLT)

A FURTHER STEP TOWARDS INTEGRATION OF DLT IN THE LUXEMBOURG CAPITAL MARKETS SPHERE

On 21 January 2021, the Luxembourg Parliament adopted draft law 7637 aiming at modernising the law of 6 April 2013 on dematerialised securities (the “**2013 Law**”) by expressly recognising the possibility of using secure electronic registration mechanisms (*dispositifs d’enregistrement électroniques sécurisés*), including distributed ledgers (such as, for example, private blockchains based on Ethereum technology), for the purpose of issuing dematerialised securities. The adopted law was subsequently published in the *Mémorial A* on 22 January 2021 (the “**Law of 22 January 2021**”).

OF CENTRAL ACCOUNT KEEPERS AND DISTRIBUTED LEDGERS - THE TWOFOLD PURPOSE OF THE LAW OF 22 JANUARY 2021

The Law of 22 January 2021:

- introduces into the 2013 Law a definition of the term of “securities issuance account” (*compte d’émission*) to clarify that the issuance of dematerialised securities and the conversion of materialised securities into dematerialised securities may be effected through the use of secure electronic registration mechanisms. This clarification is intended to expressly recognise the ability to use new secure electronic registration mechanisms,

such as distributed ledgers, in connection with the issuance of listed and unlisted dematerialised securities; and

- expands the scope of application of the 2013 Law by allowing investment firms and credit institutions to act as central account keepers for unlisted debt securities. So far, this faculty had been restricted to central account keepers approved in accordance with Art. 28-11 of law of 5 April 1993 on the financial sector, as amended. Investment firms and credit institutions intending to operate as central account keepers must however have appropriate monitoring and security mechanisms for their computer systems which are adapted for holding a central account. Such infrastructure must, *inter alia*, enable the recording of all securities pertaining to a particular issuance in a single issuance account and the circulation of securities by transfer from one account to another.

THIS MARKS A CONTINUATION OF LUXEMBOURG’S QUEST TO CATER FOR THE USE OF DLTs IN CAPITAL MARKETS

The Law of 22 January 2021 is not the Luxembourg legislator’s first step towards opening up the Grand Duchy’s capital markets to DLTs. Indeed, the Law of 22 January 2021 follows the law of 1 March 2019, amending the Law of 1 August 2001 on the circulation of securities by recognising the transfer of securities carried

out by means of secure electronic registration mechanisms (i.e. notably mechanisms based on DLT).

The adoption of the Law of 22 January 2021 demonstrates, once again, the Luxembourg lawmakers’ progressive attitude towards DLT and their intentions of ensuring that Luxembourg remains one of the most innovative EU jurisdictions in the field of dematerialised securities’ issuance, without however interfering with the EU’s plans for elaborating a more general, harmonised legislative framework for DLTs and blockchains, in particular.

While intentionally kept very broad to cater for potential further technological advancements in DLT and related fields, the amendments to the 2013 Law will, in the future, allow securities to be issued and transferred, i.e. circulated from one account to another, completely “on-chain”. The main advantages of such procedure and the use of DLT in general, are (i) an increased transparency and (ii) the protection against fraud or loss of securities (due, in particular, to the generally immutable nature of distributed ledgers) and could potentially result in (iii) the acceleration and simplification of the process of issuing dematerialised securities.

In combination with the opening up of the status of central account keepers for unlisted debt securities to investment firms and credit institutions, this legislative development will allow existing players in the capital markets industry to broaden their range of services and may even attract new innovative players to Luxembourg’s financial sector.

CONTRIBUTORS



Pierre-Alexandre Degehet
Partner

padegehet@bsp.lu



Nuala Doyle
Partner

ndoyle@bsp.lu



Laurent Lazard
Partner

llazard@bsp.lu



Philippe Sadler
Associate

psadler@bsp.lu