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Newsflash - Corporate

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## The reform of the Luxembourg company law

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## CONTEXT

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Company law matters are currently regulated by the Luxembourg company law of August 10<sup>th</sup> 1915 on commercial companies, as amended from time to time (the **Law 1915**) as well as certain provisions of the Luxembourg civil code relating to certain Luxembourg legal entities.

## WHAT HAPPENED?

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Today, the Luxembourg Chamber of Deputy has finally adopted the expected bill of law 5730 (the **5730 Bill**) aimed at modernizing the Law 1915 and amending some provisions of the Luxembourg civil code as well as of the law of December 19<sup>th</sup> 2002 on the register of commerce and companies and accountancy and annual accounts of companies.

## ENTRY INTO FORCE

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Further to today's vote, the amended Law 1915 will become effective three days after the publication of the law in the *Mémorial A* (official gazette) in Luxembourg. Considering the size of the law and the number of amendments, we have no clear view on when this shall take place but we expect this to occur in the course of July or most probably in August.

## TRANSITION PERIOD

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Luxembourg companies incorporated and in existence **before** the entry into force of the amended Law 1915 will remain subject to the

existing regime of the Law 1915 for a transitional period of twenty-four months. By the end of this transitional period at latest, Luxembourg companies will have to amend their articles of association or other constitutive documents in order to reflect the amendments and comply with the mandatory provisions introduced by the 5730 Bill.

For the avoidance of doubt, attention must be drawn to a situation which might lead to confusion with respect to applicable rules. Indeed, within the said transitory period, as far as **currently existing companies** are concerned and **as long as** their articles of association have not been amended, the Law 1915 remains valid and applicable to all clauses of the captioned articles of association that would be in contradiction with the amended Law 1915 whilst the newly amended regime (amended Law 1915) will become applicable to all other matters not regulated in the said articles of association.

All other Luxembourg companies to be incorporated **after** the entry into force of the amended Law 1915 will have to comply immediately, with the new regime.

## FLEXIBILITY AND LEGAL CERTAINTY

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Luxembourg is known for being business-oriented and therefore emphasis is constantly made on pragmatic and flexible solutions. The same is true for this reform of the Law 1915, where flexibility and legal certainty were key drivers to the legislator during these years of work and discussions in relation to the 5730 Bill.

The result is an increase of flexibility of the Law 1915 and a confirmation by the law of corporate legal solutions developed and accepted by Luxembourg practitioners and market.

## GENERAL OVERVIEW OF THE AMENDMENTS

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- The legislator has introduced a new simplified form of company based on the French model; the *société par actions simplifiée* (simplified private company) (**SAS**). The SAS will be governed by the same rules as the *société anonyme* (public limited liability company) (**SA**) but subject to significant contractual freedom of the shareholders. This form of company may become an interesting alternative to existing form of commercial companies for joint ventures or startup companies, for instance in the Fintech area.
- The legislator has decided to increase the attractiveness of the certainly most widely used form of company in Luxembourg, the *société à responsabilité limitée* (private limited liability company) (**Sàrl**), by enhancing its already significant flexibility. Without entering into the details in this document, the legislator has confirmed some generally accepted corporate law practices like the mechanism of authorized capital, today formally recognized in the amended Law 1915. Some other important new features: (i) the daily management of the Sàrl may, in the future, be delegated by the board of managers to a board member, third party or employee; (ii) the maximum number of shareholders of the Sàrl has been increased to 100 (against 40 before); (iii) the minimum share capital has been reduced to Euro 12,000; (iii) Sàrl will be authorized, under certain conditions, to carry out share redemption and issue founder shares; (iv) Sàrl will be submitted to SA's conflicts of interest provisions and confidentiality provisions; (v) majority thresholds at general meetings are simplified; (vi) managers will be allowed to pay interim dividend under the same conditions as the SA; (vii) Sàrl will be allowed to issue bonds to the public but still remain prohibited to list its shares, etc.
- For SA and *société en commandite par actions* (corporate partnerships limited by shares) (**SCA**), some key changes as well: (i) change of nationality no longer requires unanimous vote of the shareholders; (ii) recognition of tracking shares issuance; (iii) validity of lock up clauses in the articles of association; (iv) issuance of non-voting shares will no longer be limited to 50% of the corporate capital and non-voting shares do not necessarily need to receive a preferred dividend; (v) introduction of a free shares (*actions gratuites*) allocation regime and possibility to issue shares below par value under certain conditions; (vi) possibility to create an executive board (*comité de direction*); (vii) formal recognition of voting agreements under specific conditions, etc.

All Luxembourg based and incorporated companies will face a questioning phase in the course of which an assessment will need to be performed as to whether or not any articles of association, shareholder agreements, joint ventures agreements, incentive plans or any



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other constitutive documents, will require amendment during the transitory period following the entry into force of the amended Law 1915. Over the coming period we shall offer to you a tailored discussion and introduction into the amendments.

Should you need any further information, please do not hesitate to contact us.



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