

Modernisation of Luxembourg Company Law

The law of 10 August 2016 modernising the law concerning commercial companies of 10 August 1915 (the "**Company Law**") and modifying the Civil Code (the "**New Law**") has been published in the Luxembourg official gazette (*Mémorial A*) n°167 on 19 August 2016 and enters into force on 23 August 2016.

The New Law provides for a complete modernisation of the Company Law. While following a pragmatic approach with regard to the contractual freedom of the parties, it also ensures a high degree of legal certainty for all of the players involved. Useful clarifications of matters previously not set out explicitly in a legal provision will be introduced, additional rules and instruments will be implemented. A new corporate form, the SAS (*société par actions simplifiée*), will also be added to the existing corporate vehicle toolbox.

The new regime will be immediately applicable to all companies incorporated after its entry into force and existing companies will have 24 months to adapt their articles of association.

The modernisation of the corporate law regime will contribute to ensuring that Luxembourg continues to offer flexible structuring options for foreign as well as domestic investors, and caters for the demands of an international financial centre.

This briefing outlines the main characteristics of the New Law and provides useful insights into its most relevant provisions. It has been designed to help you identify the changes that may be relevant for your business.

We will be happy to assist you with reviewing your legal documentation (e.g. articles of association, shareholders' agreements and joint venture agreements) and ensuring that it fits with your current and future needs.

Be ready for the change!

Contacts



Christian Kremer
Partner

T: +352 48 50 50 1
E: christian.kremer
@cliffordchance.com



Katia Gauzès
Partner

T: +352 48 50 50 1
E: katia.gauzes
@cliffordchance.com

Please note that, except if otherwise provided, references to articles in this briefing are to the Company Law as modified by the New Law

General modifications	
<ul style="list-style-type: none"> Clarification regarding shares whose ownership is divided between bare-ownership and usufruct 	Articles 1852bis and 1865bis Civil Code, articles 32-1bis, 32-3 (7) 69-1 (1), 73, 154, 189 and 198
<ul style="list-style-type: none"> Introduction of tracking shares 	Article 1853 Civil Code
<ul style="list-style-type: none"> Recognition of provisions where current or future shareholders organise the transfer or the acquisition of shares 	Article 1855 Civil Code
<ul style="list-style-type: none"> No automatic dissolution for companies whose shares are held by a sole shareholder 	Article 1865bis Civil Code
<ul style="list-style-type: none"> Introduction of a simplified liquidation procedure for companies with a sole shareholder 	Article 1865bis Civil Code and article 141
<ul style="list-style-type: none"> Issuance of bonds available for all companies (for convertible bonds, rules regarding share transfer restrictions apply) 	Articles 11ter and 11quater
<ul style="list-style-type: none"> Introduction of a new regime on nullity of decisions taken by general meetings 	Article 12septies
<ul style="list-style-type: none"> Minority shareholders (10%) may ask written question to the management body 	Articles 154
<ul style="list-style-type: none"> Introduction of a short limitation period of six (6) months for the nullity of actions and decisions following incorporation 	Article 157
<ul style="list-style-type: none"> Introduction of a new section on the transformation of companies 	Section XVquater - Articles 308bis-15 to 308bis-26

Modifications affecting public limited liability companies (<i>sociétés anonymes</i> or SA)	
Capital structure	
<ul style="list-style-type: none"> Minimum share capital reduced to EUR 30,000 	Article 26
<ul style="list-style-type: none"> Possibility to issue shares below par value under certain conditions 	Article 26-5
<ul style="list-style-type: none"> Clarification that conversions of convertible bonds, contributions by set-off as well as incorporation of reserves, profits or share premium to the share capital qualify as contributions in cash (no auditor's report required) 	Articles 32-1 (5) and 32-4

<ul style="list-style-type: none"> Exercise period for preferential subscription rights shortened from 30 to 14 days minimum 	Article 32-3 (5)
<ul style="list-style-type: none"> Introduction of the possibility to allocate free shares to employees or corporate officers of the company or its affiliates 	Article 32-3 (5bis)
<ul style="list-style-type: none"> Possibility to issue shares with different nominal value 	Article 37 (1)
<ul style="list-style-type: none"> Recognition of transfer restrictions on shares and beneficiary shares 	Article 37 (2)
<ul style="list-style-type: none"> Introduction of a new regime for non-voting shares 	Articles 45 to 47
<ul style="list-style-type: none"> Equal treatment of shareholders being in the same position with regard to the acquisition by the company of its own shares 	Article 49-2 (1) 4°
<ul style="list-style-type: none"> Clarification on dividend distributions concerning treasury shares 	Article 49-5 (1) a)
Management	
<ul style="list-style-type: none"> Introduction of the possibility for the management body to establish committees with specific duties 	Articles 54 and 60bis-7 (5)
<ul style="list-style-type: none"> Introduction of new conflict of interest rules 	Articles 57, 60, 60-2, 60bis-8 and 60bis-18
<ul style="list-style-type: none"> Introduction of executive committee or chief executive officer as a new corporate body 	Article 60-1
<ul style="list-style-type: none"> Possibility to take circular resolutions expressly recognised; such decisions are deemed to be taken at the registered office of the company 	Article 64
<ul style="list-style-type: none"> Clarification on majority requirements for management decisions 	Article 64bis
<ul style="list-style-type: none"> Election of a chairman of the board becomes optional 	Article 64bis
<ul style="list-style-type: none"> Management body may be authorised to transfer the registered office from one municipality to another 	Article 67-1 (1)
General meeting of shareholders	
<ul style="list-style-type: none"> Right of action against the management introduced for minority shareholders (10%) 	Article 63bis
<ul style="list-style-type: none"> Attendance list for all types of general meetings becomes mandatory 	Article 67 (2)
<ul style="list-style-type: none"> Possibility to provide that voting rights are proportional to the share capital represented by the share 	Article 67 (4)
<ul style="list-style-type: none"> Prorogation of general meeting by shareholders representing 10 % of the share capital 	Article 67 (5)

<ul style="list-style-type: none"> Management may suspend voting rights of defaulting shareholders 	Article 67 (8)
<ul style="list-style-type: none"> Recognition of waiver to exercise voting rights and voting arrangements 	Article 67 (8) and 67bis
<ul style="list-style-type: none"> Unanimity no longer required for change of nationality and no bondholders meeting required to modify the corporate object 	Article 67-1
<ul style="list-style-type: none"> General meetings held via videoconference or other telecommunications means are deemed to be held at the registered office of the company 	Article 70
<ul style="list-style-type: none"> New convening formalities are introduced: <ul style="list-style-type: none"> - notice period reduced to 8 days for general meetings if all shares are in registered form - possible to convene meetings by other means of communication (e.g. email) 	Articles 67, 67-1, 70 and 70bis
<ul style="list-style-type: none"> Draft of restated articles of association need to be provided 8 days in advance in case of amendment of the articles of association Documents in view of general meetings need to be made available 8 days in advance at the registered office 	Article 73
<ul style="list-style-type: none"> In case of losses reducing the net assets below half of the share capital of the company, the management body will have to issue a report (unanimous waiver possible) 	Article 100

Introduction of the simplified stock company (<i>société par actions simplifiée</i> or SAS)	
<ul style="list-style-type: none"> Inspired by French law and is defined as a company whose capital is divided into shares, incorporated by one or several persons contributing a specific amount Rules applicable to the SA are generally applicable to the SAS, except for the provisions concerning management and general meetings which shall be set out in the articles of association and may thus be more flexible Shares may not be issued to the public and the management of an SAS is entrusted to a president or several directors Transfers of shares made in breach of the articles of association are null and void 	Articles 101-18 to 101-26

Modifications affecting corporate partnerships limited by shares (<i>sociétés en commandite par actions</i> or SCA)	
<ul style="list-style-type: none"> No need to designate a permanent representative for legal entities acting as managers 	Article 107

Modifications affecting cooperative companies (<i>sociétés coopératives</i>)	
• Possible to provide for limited or unlimited liability of shareholders	Article 113
• Minimum number of shareholders reduced to 2	Article 114
• Introduction of the possibility to issue beneficiary shares	Article 127

Modifications affecting private limited liability companies (<i>sociétés à responsabilité limitée</i> or <i>SARL</i>)	
Capital structure	
• Maximum number of shareholders raised to 100	Article 181
• Minimum share capital reduced to EUR 12,000	Article 182
• Possibility to issue beneficiary shares, redeemable shares and sweat equity	Articles 182 and 183
• No longer required to indicate share capital in corporate documents	Article 187
• New share transfer procedure and possibility to decrease the majority required for transfers to non shareholders to 50%	Article 189
Management	
• Introduction of the board of managers as a corporate body • Possibility to take circular resolutions expressly recognised; such decisions are deemed to be taken at the registered office of the company • Delegation of day-to-day management expressly foreseen • Introduction of conflict of interest rules	Article 191bis
• Clarifications regarding rules governing interim dividend distributions	Article 198bis
• Introduction of authorised share capital	Article 199
General meeting of shareholders	
• Management may suspend voting rights in case of multiple owners of a share and in case of defaulting shareholders	Articles 186 and 195
• General meeting of shareholders are mandatory for modifications of articles of association • Annual general meeting mandatory for SARLs with more than 60 shareholders	Article 193
• Waiver to exercise voting rights expressly recognised	Article 195

<ul style="list-style-type: none"> • Attendance list for general meetings becomes mandatory • Introduction of the possibility to participate in shareholders' meetings via new means of communication and to vote via voting forms 	Article 196
<ul style="list-style-type: none"> • Modifications of rights attached to different share classes require approval in each class 	Article 196bis
<ul style="list-style-type: none"> • Modifications of the articles of association by a majority of 75% of the share capital • Unanimity no longer required for a change of nationality 	Article 199

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 boulevard G.D. Charlotte, B.P. 1147, L-1011 Luxembourg, Grand-Duché de Luxembourg
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*Linda Widyati & Partners in association with Clifford Chance.

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