

## LUXEMBOURG LAW RECOGNISES THE USE OF DLT FOR THE ISSUANCE OF DEMATERIALISED SECURITIES

The Luxembourg law of 22 January 2021 modernising the existing legal framework for dematerialised securities entered into force on 26 January 2021. This law forms part of the ongoing modernisation of Luxembourg's legal framework for finance transactions, in continuation of the law of 1 March 2019 which already expressly recognised the possibility to hold and register book-entry securities in securities accounts by way of distributed ledger technology (DLT). The law recognises the possibility to use secure electronic recording systems (including DLT) for dematerialised securities (whether at issuance or upon conversion from another form of security). This briefing summarises the key aspects of the new framework.

### ISSUANCE ACCOUNT

The issuance of dematerialised securities and the conversion into dematerialised debt or equity securities are organised in Luxembourg by the law of 6 April 2013 on dematerialised securities (2013 Law). The issuance or conversion of dematerialised securities is carried out thereunder exclusively by registering the securities in a single issuance account (*compte d'émission*). The latter is held with a settlement institution or a central account holder.

The issuance account (*compte d'émission*) acts as the creator account of the securities and is used for reconciliation with the securities registered in the securities account (*compte-titres*) of the clients of the settlement institution or central account holder. The dematerialised securities are represented by the entry in such a securities account (*compte-titres*) and are transmitted by a transfer from securities account to securities account.

The new law introduces a definition of the term "issuance account" (*compte d'émission*) in the 2013 Law, stating that such account may be held and the securities records therein may be effected within or by virtue of secure electronic recording systems (*dispositifs d'enregistrement électroniques sécurisés*), including distributed electronic ledgers or databases relying on distributed ledger technology (DLT).

The new law constitutes a continuation of the law of 1 March 2019 modifying the law of 1 August 2001 on the circulation of securities which already

### Key aspects

- The Law recognises the possibility to use secure electronic recording systems (including DLT) for the issuance of dematerialised listed or unlisted securities.
- The new framework is technology neutral and complements the law of 1 March 2019 that recognised already the use of secure electronic recording systems (including DLT) for the registration and transfer of book-entry securities in securities accounts.
- The Law also extends the scope of entities permitted to act as central account holders for unlisted debt securities to Luxembourg and EU credit institutions and investment firms.

recognised the possibility to hold and register book-entry securities in securities accounts (*comptes-titres*) and record transactions on such securities within or by virtue of secure electronic recording systems, including distributed electronic ledgers or databases.

The new law takes a "technology neutral" approach to the secure electronic recording systems which can be used for this purpose, but specifically mentions "distributed electronic ledgers or databases".

## **EXTENSION OF THE SCOPE OF ENTITIES ACTING AS CENTRAL ACCOUNT HOLDERS**

In accordance with the law of 5 April 1993 on the financial sector (as amended) (FSL), the central account holders are persons or entities whose activity is to hold central accounts for dematerialised securities. Under the previous framework, no person other than settlement institutions may carry on the activity of central account holder without holding a licence in accordance with Article 28-11 of the FSL. Such licence could however under the previous framework only be granted to Luxembourg credit institutions or investments firms or Luxembourg branches of credit institutions or investment firms authorised in another Member State.

The new law opens the activity of central account holder with respect to unlisted debt securities to investment firms and credit institutions governed by European law (i.e. MiFID<sup>1</sup> investment firms and CRR<sup>2</sup> credit institutions, as defined in Article 1, 9) and 13) of the FSL). Such institutions must have specific mechanisms and procedures in place as well as operational and technical capacities for the exercise of their activity equivalent to those required for the authorisation as central account holder.

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<sup>1</sup> Directive 2014/65/EU on Markets in Financial Instruments (recast).

<sup>2</sup> Capital Requirements Regulation (EU) No 575/2013.

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