

Luxembourg corporate law - modernisation 2016

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Following extensive consultation, Luxembourg has enacted a far-reaching and meaningful modernisation of its corporate law. This provides a more modern, flexible and attractive corporate law framework whilst still rooted firmly in Luxembourg corporate law core principles: contractual freedom for shareholders and security for third parties.

As this new piece of legislation (the **Law**) has just been enacted, this briefing focuses on:

- (i) the key changes that have been brought to the three most widely-used corporate forms: the private limited company (SARL), the public limited company (SA) and the limited partnership issuing shares (SCA); and
- (ii) the new form of company introduced into Luxembourg law: the simplified public company (SAS).

| SARL – Private limited company

As a flexible and quasi-partnership company, the SARL was already operating within a light set of statutory requirements. The Law further enhances its attractiveness by making it more flexible, adding useful new tools to its existing regime and providing legal certainty for certain already well established practices, as detailed below, in addition to the additional changes of general application outlined in the below section relating to all three types of companies (SARL, SA, SCA):

- the maximum permitted number of shareholders is raised from 40 to 100, and except in case of an amendment to the articles, there is no need to hold shareholders' meetings unless there are more than 60 shareholders

- the minimum required share capital is reduced to EUR 12,000
- SARL are now formally authorized to issue:
 - the very flexible “beneficiary units” (*parts bénéficiaires*), which do not form part of the share capital, and whose rights, including in relation to voting and profit sharing, are exclusively determined by the articles, for maximum flexibility
 - specifically redeemable shares, with conditions and modalities also exclusively determined by the articles
 - debt securities to the public, although the public issue of shares and beneficiary units remains prohibited
- SARL may have an authorized share capital (in addition to the issued share capital), allowing it to issue shares within the limit of the authorisation granted by the shareholders, without the need to hold a shareholders’ meeting before notary
- the shareholders’ approval required to transfer shares to third parties may now be lowered to only half of shares of the Company (the same applies to beneficiary units with voting rights)
- unanimity is no longer required to change the company’s nationality
- the articles may authorise the directors to suspend the voting rights of shareholders not complying with their obligations
- separately, shareholders may waive permanently or temporarily the exercise of their voting rights
- voting agreements between shareholders are now formally recognized, subject to conditions
- the articles may authorise the directors to cancel shares redeemed by the company and decide on a corresponding share capital reduction
- a change to the articles now only requires the approval of shareholders representing 3/4 of the share capital: the historic “double majority” requirement to also have a numeric majority of shareholders has been abolished
- the daily management of the company may be delegated (whether to a board member or to a third party)
- the use of telecommunication devices at board and shareholders’ meetings is formally recognized
- the articles may authorise the directors to pay interim dividends, subject to the same rules currently applicable to SA.

SA – public limited company

Depending on the activities or transaction structuring, the SA is less frequently encountered in practice, partly due to the more extensive statutory environment which applies to it. Whilst this statutory environment will remain more prescriptive than that of a SARL, it will benefit from the following flexibilities:

- the minimum required share capital is reduced to EUR 30,000
- subject to certain conditions, shares without nominal value may now be issued below their par value
- shares of unequal value or without nominal value may confer voting rights proportional to the portion of the share capital they represent (unless otherwise stated in the articles)
- a specific regime is introduced for the allocation of free shares of the company to its or certain of its affiliates' employees or directors
- time-limited lock-up clauses providing for restrictions on the transferability of shares, beneficiary units (*parts bénéficiaires*), subscription rights and certain convertible debt securities, are now formally recognized
- the regime governing non-voting shares has been simplified (notably, the limitation to 50% of the share capital and the need to attach preferential financial rights to such shares have been abolished)
- more flexible rules relating to the company's management have been introduced:
 - specific recognition of the possibility to create committees
 - ability for the board of directors to delegate a large portion of its management powers to a general director or a management committee (who may also be authorised to represent the company)
- minority shareholders/holders of beneficiary units (holding at least 10% of the voting rights at the shareholders' meeting which resolved on the relevant discharge) may take legal action against the company's management or supervisory board, as applicable
- unanimity is no longer required to change the company's nationality
- the articles may authorise the management body to suspend the voting rights of shareholders not complying with their obligations
- separately, shareholders may waive permanently or temporarily the exercise of their voting rights
- voting agreements are now formally recognized, subject to conditions

- the procedures to convene shareholders' meetings have been simplified when all the shares are in registered form: with the consent of shareholders, convening by e.g. express or electronic mail can now be formally adopted.

SCA – limited partnership issuing shares

All the above changes relating to the SA also apply to the SCA.

It is to be noted that the Law helpfully clarifies that when a legal entity is appointed as manager of the SCA, it does not need to appoint a permanent representative.

Changes of general applications

The following also apply to all SARL, SA and SCA:

- tracking shares are now formally recognised
- the bonds issuance regime has been both standardized (any type of company may now issue bonds) and rendered more flexible
- a specific regime regarding the changes of corporate form has been introduced, providing clarity on companies' transformations
- the articles can authorize the management body (ie no longer the shareholders only) to transfer the registered office of the company within the Grand Duchy of Luxembourg and amend the articles accordingly
- clear rules governing voting and economic rights of shares bearing usufructs have been introduced
- the "simplified" liquidation regime, long-used in practice by way of a single deed before notary, has been formally recognized, under certain conditions.

Transitory period

A transitory period of two years (from the date on which the Law takes legal effect) has been introduced for existing companies to comply with these new legal provisions.

However, when an amendment to the articles is required due to the very fact that they refer to a legal provision which has been abrogated or whose numbering has changed, the management body of the company is authorised to carry out the required modifications in the articles.

At the end of this two years transitory period, any provisions of the articles not at that time updated to comply with the Law, will be deemed extinguished and the new statutory rules will directly apply.

SAS – *société par actions simplifiée* – simplified public company

A new simplified form of public limited company has been introduced into Luxembourg law, the SAS. Inspired by the French market and now an option to consider for joint venture vehicles for instance, the SAS is primarily regulated by the rules applicable to SA but with almost limitless flexibility with respect to corporate governance. The main points of differences concerning governance are that:

- the SAS is managed by a president, which can be either an individual or a legal entity
- the president represents the company on dealings with third parties
- the articles may provide that the president can be assisted by one or more directors.

It is to be noted that the SAS cannot issue shares to the public.

To discuss further any question relating to this briefing and the scope of corporate vehicles, please contact Laurent Thailly, Managing Associate, or your usual contact at Ogier Luxembourg.

Read the [Amended Law of 10 August 1915](#) relating to commercial companies (in French).

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