



# LINARI LAW FIRM

AVOCATS À LA COUR

## Amendment to the Luxembourg Company Law

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On August 10, 2016 Luxembourg approved the law modernizing the Luxembourg company amended law of 10 August 10, 1915 relating to commercial companies as amended (the “**Law**”). The main purpose of such amendment is to modernize the Law in an international context. Efficiency, legal certainty and flexibility characterize the spirit of the amendments brought to the Law. The Law was published on August 19, 2016.

In addition, the law in relation to the introduction in the Law of the **simplified private limited liability company** *société à responsabilité limitée simplifiée* (the “**S.à r.l-S**”) was also approved.

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### **I. The modernization of the Luxembourg company law:**

The Law is subject to many technical amendments, please find hereinafter a non-exhaustive list of the more relevant amendments in the Law:

#### **General:**

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- The concept of tracking shares (i.e. shares issued by a company for the purpose of tracking the performance of a specific activity or underlying asset) has been recognised by the Law.
- Shareholders will be expressly permitted to enter into agreements pertaining to voting rights, in certain circumstances. Such voting arrangements are now subject to formal validation and shareholders may waive part or all of their voting rights.
- All companies with legal personality may issue bonds.
- The unanimous consent of the shareholders is not required anymore in order to change the nationality of a company. The approval of bondholders is not needed for the amendment of the object of a company.
- The shareholders holding 10% or more of the voting rights are entitled to request information on management decisions regarding the company and its subsidiaries.
- The rules applicable on nullity of decisions taken by general meetings have been clarified.

#### **Specific amendments to the public limited liability company (Société Anonyme, S.A.):**

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- Introduction of new tools regarding the management of a S.A. (possibility for the board of directors to create committees, creation of a new corporate position of CEO, the obligation to appoint a chairman disappears).
- The Board is now allowed to transfer the registered office of the company anywhere in the Grand-Duchy of Luxembourg.
- Circular resolutions are now expressly permitted.
- The minimum share capital has been rounded down to 30,000 €.
- Possibility to provide in the articles of association for effective share transfer restrictions, lock up periods, prior consent and pre-emption clauses.

- Formalities relating to the means of convening of the shareholders meetings and to the convening periods are modified.
- Possibility to allocate free shares to employees of a S.A. (and its affiliates depending on certain conditions).
- Abolition of the 50% limit for the issuance of non-voting shares in the share capital of a S.A.
- Issuance of shares below the par value of the existing shares and issuance of shares with different nominal values are permitted.
- Depending on certain conditions an auditor's report is no longer required for contributions in kind consisting in receivables.
- Right of action against the management introduced for minority shareholders (10%).

**Specific amendments to the private limited liability companies (Société à responsabilité limitée, S.à r.l.):**

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- Introduction of an authorized share capital whereby the board of managers may be authorised to issue shares.
- Recognition of the possibility to distribute interim dividends.
- The minimum share capital has been rounded down to 12,000 €.
- Possibility to issue beneficiary shares and redeemable shares. New provisions specifically address the repurchase by a S.à r.l. of its own shares.
- Possibility to issue shares not representing the share capital in exchange for a contribution of work or service (*apports en industrie*).
- Modification of the maximum number of shareholders (from 40 to 100).
- In case of transfer of shares to non-shareholders possibility of reducing the agreement of three quarters of the share capital to half of the share capital.

## Introduction of a new company form, the simplified company limited by shares (*société par actions simplifiées*)(SAS) :

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- The rules applicable to the S.A. are generally applicable to the SAS.
- The main difference with the S.A. is that the SAS operates mostly on a contractual basis.
- The shareholders are granted with a high level of flexibility in order to determine the corporate governance rules and the rights and obligations attached to the shares.

The new regime will be immediately applicable to all companies incorporated after its entry into force (**i.e. August 23, 2016**).

Existing companies will have **24 months** to adapt their articles of association.

## II. The introduction of the S.à r.l-S (*Société à responsabilité limitée simplifiée*)

The relevant law concerns individual entrepreneurs who want to start commercial activities which do not require an important starting capital, for instance in services providing activity.

The key features of the S.à r.l-S are the followings:

- The share capital of the S.à r.l-S shall range between 1 euro and 12,000 euros.
- The S.a r.l-S may be incorporated by a private deed (there is no requirement of a notarial deed) which represent a great advantage in terms of efficiency and cost reduction.
- The articles of association of the S.a r.l-S are subject to publication.
- The S.à r.l-S can only have natural persons as shareholders and managers.
- The corporate object of the S.à r.l-S is limited to the exercise of activities for which a business license (*autorisation d'établissement*) is necessary (and to be provided at the time of registration).
- As the S.à r.l-S is a variant of the S.à r.l. all the provisions applicable to the S.à r.l. are applicable to the S.à r.l-S unless specifically provided differently.

The law regarding the S.à r.l-S shall come into force on **16 January 2017**.