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Contact us:



[Sophie Wagner-Chartier](#)
Partner, Corporate Law,
Mergers & Acquisitions



[Anne Contreras-Muller](#)
Of Counsel, Microfinance,
Social Impact Finance



[Astrid Wagner](#)
Senior Associate, Corporate Law,
Mergers & Acquisitions

Societal impact company

The law of 12 December 2016 (the “**Law**”) has introduced a new legal framework for companies having a social or societal impact: the *société d’impact sociétal* (the “**SIS**”).

The purpose of the legislator is to formally recognise the specificity of companies dedicating their activities to supporting people in fragile situations or contributing to the preservation or development of specific social or societal issues, including the protection of the environment.

Through the creation of such a framework, the SIS will become more visible and the legal certainty around their activities, notably their commercial activities, will be strengthened.

Who can apply for SIS status?

Any public limited company (*société anonyme*), private limited company (*société à responsabilité limitée*) or cooperative company (*société coopérative*) which complies with the principles of the social and solidarity economy can opt for the status of an SIS and be approved as such by the minister responsible for the social and solidarity economy (the “**Minister**”).

The social or societal purpose of the SIS must be referred to in its articles of association, together with key performance indicators (“**KPIs**”) allowing for the effective and efficient measurement of the realisation of such purpose.

Unless expressly otherwise provided for by the Law, the SIS is governed by the law of 10 August 1915 on commercial companies, as amended.

Share capital and financial provision

The new legal framework aims to enable SIS-type companies (i) to be financed both by philanthropic investors and impact investors and (ii) to pursue commercial activities. This is the first time that Luxembourg has recognised that a commercial company, *i.e.* the SIS, may not be driven by the mere aim of procuring financial benefits for its shareholders.

As a consequence, the share capital of the SIS may be composed of:

- impact shares (*parts d’impact*) (hereinafter “**Impact Shares**”), which do not entitle their holders to participate in the profits of the SIS. Any profits to be allocated to Impact Shares must remain in the SIS and be reinvested in order to maintain and develop its corporate purpose;

- return shares (*parts de rendement*) (hereinafter “**Return Shares**”) which entitle their holders to profits, provided however that the SIS’s social or societal objectives, measured in the light of its KPIs, have been met.

Corporate rules

The share capital of the SIS must consist of 50% Impact Shares at least.

The SIS must have an autonomous management in that sense that it must be able to choose and revoke its management bodies and maintain the required control and capacity to organise its activities. The maximum annual remuneration of any employee of an SIS-type company may not exceed a ceiling of six (6) times the amount of the minimum social salary.

An SIS is not permitted to issue debt instruments and to contract loans directly or indirectly from its shareholders.

Transparency and supervision

The SIS is subject to a specific transparency and supervision regime:

- In addition to the approval procedure at the time of incorporation, the Minister assisted by a consultative committee (*Commission consultative*) is also in charge of the prudential supervision of the SIS, ensuring that it fulfills the conditions of its status on a continuous basis.
- The annual accounts of the SIS must be audited by an independent auditor (*réviseur d’entreprises agréé*).
- The management bodies must annually draw up an extra-financial report to be submitted to the shareholders which details the implementation of the KPIs.

Tax regime

An SIS having a share capital composed exclusively of Impact Shares is exempt from Corporate Income Tax, Municipal Business Tax and Net Worth Tax. Additionally, donations made to the SIS are deductible as special expenses in the hands of the donors to the extent the SIS’s share capital is solely composed of Impact Shares.

An SIS whose share capital includes Return Shares does not benefit from any tax exemption and shall be subject to tax like any other commercial company.

Entry into force

The Law which has been published today in the Luxembourg official journal (*Mémorial A*) will become effective on 19 December 2016.

Please do not hesitate to contact us should you require any further information.

Authors: Anne Contreras-Muller and Astrid Wagner

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