



Luxembourg newsflash

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Luxembourg law on the exploration and use of space resources entered into force

The Luxembourg law on the exploration and use of space resources of 20 July 2017 entered into force on 2 August 2017 and placed Luxembourg among the most innovative space-oriented nations in the world.

The new law provides a legal framework for the “new space” activities. It aims at the further development of the constantly growing Luxembourg space industry employing already more than 700 highly skilled workers.

As initially proposed, the new law consists of two main parts dealing respectively with the ownership of space resources and the authorisation regime for the exploration and use of such resources.

Article 1 states that space resources are capable of being appropriated. The reasoning of the legislator is made, among others, by analogy with the rules governing the high seas and the possibility which exists to explore the resources of the latter without appropriating the high seas as such.

The new law also sets a number of authorisation conditions, which need to be fulfilled by a potential operator to be allowed to carry out space missions.

The exploration and use of space resources is consequently only possible on the basis of a ministerial authorisation granted to an operator (on a personal and non-assignable basis) with respect to a specific mission (articles 2, 3 and 5). The new law clearly states that the authorised operator has to carry out its activity in accordance with the international obligations of Luxembourg (article 2).

Authorisation may be granted only to legal persons existing under Luxembourg law and having their registered office in Luxembourg in the form of a *société à responsabilité limitée* (S.à r.l.), a *société anonyme* (S.A.), a *société en commandite par actions* (S.C.A.) or a *société européenne* (S.E.) (article 4). The shareholders of the operator may be Luxembourg or foreign, natural or legal persons.

The application for authorisation must include any useful information for the assessment of such application and the mission program (article 6).

A risk assessment analysis of the mission, including the respective insurance policy covering such risk, needs to be prepared by the operator and be submitted to the competent ministry together with the application. The authorisation shall also be subject to proof of an adequate financial basis to cover the risks relating to the mission

which is the subject of the application for authorisation (article 10 (1)).

The central administration, including the administrative and accounting structures, of the operator must be located in Luxembourg (article 7 (1)) and the operator should dispose of robust financial and internal governance schemes (article 7 (2)).

The identity of direct or indirect shareholders holding a qualifying holding of 10% of the share capital or 10% of voting rights in the operator or, in the absence of such qualified holding, the identity of the 20 largest shareholders must be disclosed. The authorisation may be refused if the quality of the shareholders (article 8 (1)) or of the members of the management body (article 9 (1)) is unsatisfactory.

At least two persons must be responsible for the management of the operator and must be empowered to effectively determine the direction of the business activity (article 9 (2)). Any subsequent change in the operator's management body must be communicated to the competent ministry beforehand and the ministry holds a veto right with respect to the appointment of persons not fulfilling the relevant good repute and professional experience criteria (article 9 (3)).

The operator must appoint an independent auditor. Any subsequent change of independent auditor by the operator shall be subject to the prior approval of the competent ministry (article 11).

The authorisation that is being delivered may set out a number of requirements with respect to the activities in or outside Luxembourg, the limits associated with the mission or the modalities of the supervision of the mission (article 12).

The costs of an application for authorisation shall be borne by the applicant and may range between EUR 5,000 to EUR 500,000 depending on the complexity of the application (article 13).

The authorisation once granted may be withdrawn, among others, (i) if the operator no longer fulfils the conditions set for the granting thereof, (ii) if no use is made of the authorisation within thirty-six months from it being granted, or (iii) if the authorisation has been obtained based on false statements or irregular means (article 14).

The operator which is granted an authorisation for a mission is fully responsible for any damage caused during the mission, including during all preparatory works (article 16).

The granting of an authorisation for a mission does not dispense from the need to obtain additional approvals or authorisations, especially any business license (article 17).

Finally, the new law contains a number of criminal law provisions applying in case of violation of the specific provisions of the law (article 18).

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