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New Luxembourg rules on digital tools and processes in company law

Luxembourg companies and notaries must now embrace digitalisation.

On 15 June 2023, the Luxembourg Parliament adopted the law on the use of digital tools and processes in company law (the “**Law**”), which aims to digitalise and modernise company law and the notarial profession.

The Law has two key objectives:

- implementing EU Directive 2019/1151 of 20 June 2019 as regards the use of digital tools and processes in company law (the “**Directive**”); and
- digitalising the notarial profession.

By way of background, the Directive’s aims include enabling online incorporation of certain forms of companies and online registration of branches, and simplifying searches for information about companies.

Main measures

The main measures from a Luxembourg law perspective include:

- **Incorporation of companies without physical presence**

Luxembourg *sociétés anonymes* (public limited companies), *sociétés à responsabilité limitée* (private limited companies) and *sociétés en commandite par actions* (partnerships limited by shares) can be incorporated online without physical presence; online incorporation is also possible with physical presence.

Standard articles of association are made available free of charge by the Chamber of Notaries.

- **Making cash contributions online**

The Law introduces online payment for cash contributions to an account opened in the name of the company held with a bank operating in the EU. Payments in cash to a bank operating outside the EU are

still possible, as is proceeding by way of separate proof of funds.

• **Electronic format available for notarial deeds**

Notarial deeds may be drawn up in electronic format under the conditions and in the form laid down by the applicable laws and regulations. In all cases, the following three conditions must be met:

1. the author (such as the notary) of a notarial deed in electronic format must be identified;
2. the technical process used must guarantee the integrity of the notarial deed's content as soon as the deed is created in its final form; and
3. the technical process used must be easily understood by human beings.

• **Principle of non-discrimination between electronic and paper formats**

The Law introduces a general principle of non-discrimination between instruments, deeds and copies in electronic format, and paper instruments, deeds and copies issued by notaries. It should be noted that the concept of instruments is broader than notarial deeds and includes, among others, instruments drawn up by a bailiff (*huissier de justice*) or a registrar (*officier de l'état civil*). When instruments, deeds or copies in electronic format meet the above conditions, they are valid as originals and have the same legal value as documents, deeds or copies in paper format. The Civil Code is amended in this respect.

This principle applies both to companies that must be incorporated by notarial deed and to other forms of companies that choose to be incorporated by notarial deed (e.g. *sociétés civiles* (civil companies) and *sociétés en commandite simple* (common limited partnerships)). Consequently, the latter will also benefit from the online incorporation process.

• **New rules for notaries**

The Law provides for new rules for notaries. Key points are:

- **Identification of the parties to the deed:** Notaries remain responsible for the accuracy of the identity of the parties to the deed and for the statements and indications that they certify in the deed. They may require the use of technology (e.g. video conferencing) to be able to exchange information with the remote party.
- **Signature of the notarial deed:** Notaries must sign their deeds, copies, extracts and certifications drawn up in electronic format using a qualified electronic signature or an electronic seal within the meaning of the eIDAS Regulation (EU Regulation 910/2014 of 23 July 2014).
- **Notaries can refuse to draw up a deed in remote electronic format:** In certain circumstances, notaries may require the physical presence of a party and refuse to draw up a deed in remote electronic format (e.g. where there is a suspicion of identity theft or falsification, or the company's share capital includes a contribution in kind).
- **Setting up a notarial electronic exchange platform:** Notaries must use the electronic exchange platform to draw up their deeds. This e-platform enables notaries to draw up their deeds in electronic format, collect electronic signatures from the parties, obtain data from public bodies and authorities, and transmit data to public bodies and authorities.
- **Strengthening exchange of information between Member States' trade and companies registers**

The Law aims to strengthen the exchange of information between Member States' trade and companies registers, in particular, by allowing easier access to information about companies and branches.

• Registration of branches with the Luxembourg Trade and Companies Register

- **Registration of Luxembourg branches:** Luxembourg branches of commercial and civil companies, economic interest groupings and European Economic Interest Groupings governed by Luxembourg law must register with the Trade and Companies Register (“RCS”) to obtain a registration number.
- **Registration of EU branches of Luxembourg companies:** Branches of Luxembourg *sociétés anonymes*, *sociétés à responsabilité limitée* and *sociétés en commandite par actions* which are located in an EU Member State must be registered with the RCS to obtain a registration number.

These changes do not lead to additional administrative burdens for companies, as they must already take certain steps with the RCS, either for themselves or their branches.

What’s next?

The law will enter into force on the first day of the month following its publication in the Luxembourg official journal.

It is worth noting that further EU reform on digital tools is underway. In March 2023, the EU Commission published a proposal for a directive amending the Directive to expand and upgrade the use of digital tools and processes in company law.

How can we help?

Our Corporate Law, M&A team can assist you with all legal matters arising in connection with the Law and its practical impacts.

For further information, please reach out to your usual contact within the Corporate Law, Mergers & Acquisitions team_

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