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Major changes in Luxembourg securities legislation

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The law of 6 April 2013 introduces substantial changes to Luxembourg's securities legislation.

The law now allows the issuing of securities in dematerialised form whereas previously only the issuing of registered and bearer securities had been possible. The new law also modernises current legislation on book-entry securities in particular drawing inspiration from the work carried out by *Unidroit* in the context of the Geneva Securities Convention of October 2009 and by the Legal Certainty Group set up by the European Commission.

Issuing of dematerialised securities

Pursuant to the law of 6 April 2013, Luxembourg companies and investment funds are now authorised to issue dematerialised shares or units. Bonds subject to Luxembourg law may also be issued in dematerialised form.

Issuers therefore now have three options with regard to the form of the securities they may issue. In this respect they may issue registered and bearer securities (in both individual and global form) and now also dematerialised securities.

Listed dematerialised securities must be issued through a securities settlement system (at present Clearstream, VP Lux or Lux CSD).
Non-listed securities may be issued either through a securities settlement system or a bank or investment firm specially licensed as a "central account holder".

Issuers may convert existing securities into dematerialised securities. This conversion is either optional or compulsory. In the case of a compulsory procedure, the minimum conversion period is two years. Failure to convert securities within the initial minimum period may lead to the suspension of voting rights, the deferral of rights to distributions and, after eight years, even to a forced sale of the non-converted securities.

Finally, the new law offers issuers transparency tools with respect to securities they have issued. If the articles of incorporation of the issuer so provide, the issuer may ask intermediaries in the holding chain of securities for information on the identity of the ultimate investor. If this information is not provided within two months, voting rights on the relevant securities may be suspended.

Book-entry securities

The new law also amends and restates the law of 1 August 2001 (the "2001 Law") on the circulation of securities.

This law does not deal with the issuing of securities but with the holding of such securities in a securities account. The law thus applies not only to securities which are issued in dematerialised form, but also to bearer securities which are immobilised and to registered securities held through a nominee in order to allow their booking to a securities account.

The main changes or clarifications to the 2001 Law are inspired by the Geneva Securities Convention of October 2009 and the work of the Legal Certainty Group and may be summarised as follows:

- clarification of the rules on the exercise of voting rights by investors
- increased protection of investors in case of insolvency of their intermediary
- clarification of the prohibition of upper-tier attachment
- increased protection of investors in case of good faith acquisition of securities
- introduction of a "bankers lien" in favour of intermediaries who advance monies to their customers for the acquisition of securities

If you would like to learn more about the new law and its practical impact join our conference "The new law on dematerialised securities: should you go for it?" to be held on 7 May 2013.

Speakers: Paul Mousel, Philippe Dupont, Claude Niedner, Laurent Schummer and Jean-Marc Ueberecken, partners at Arendt & Medernach.

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