

### UPDATE

### MODERNISATION OF LUXEMBOURG COMPANY LAW

On 13 July 2016 the bill modernising the company law in Luxembourg was adopted.

The focus of the amendments is: (i) creating a new investment vehicle which can be tailored to suit the needs of large investors (ii) introducing flexibility and certainty in certain widely used existing investment vehicles; (iii) contractual freedom and a promotion of an investor and business friendly environment; and (iv) granting legal certainty to matters that were previously subject to legal practice.

There are three amendments we want to point out:

I. the Luxembourg simplified company limited by shares (SAS)

In the new Company Law a new investment vehicle is introduced, the SAS. The SAS has a far-reaching contractual freedom on governance terms and a limited set of rules, while preserving limited liability. Although the SAS is enclosed within rules applicable to SAs, the SAS retains flexibility.

II. The modernisation of the private limited liability company (S.á r.l.) and public company limited by shares (SA) regime

S.á r.l.

The Luxembourg S.á r.l. becomes more attractive for co-investments and joint ventures and for private equity co-investments and management incentive schemes. For example, the so called “double majority” is terminated and there is a possibility to reduce the shareholders’ approval threshold required to amend the articles of association and to transfer shares to non-shareholders. Furthermore, there is an increase on the maximum number of shareholders (from 40 to 100) and there are possibilities to issue beneficiary shares outside of the stated capital and to issue shares in exchange for a contribution of work or services under certain conditions. Finally, the S.á r.l. becomes less expensive because of less strict rules for supervisory auditors and formal annual general meetings.

SA

The Luxembourg SA regime is aligned more to the requirements of investors, because of the expansion of the freedom regarding securities issued by a SA and the corporate governance provisions are rationalised.

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#### III. Legal recognition of past practices, simplifications and clarifications

- Examples of such recognitions, simplifications and clarifications are:
- formal recognition of tracking shares;
- possibility for the issue of bonds to the public;
- possible dissolution without liquidation for companies with a sole shareholder;
- extended company conversion possibilities and creation of a general regime of conversion;
- possibility to change the nationality of the company with the identical requirements as to an amendment to the articles of association;
- possibility for the articles of association to authorise the board to transfer the registered office of the company anywhere within the Grand-Duchy of Luxembourg;
- creation of a legal framework relating to usufruct over shares;
- specific nullity regime regarding certain shareholder decisions;
- introduction of a legal framework for the distribution of interim dividend in a S.á r.l.;
- possibility for the managers to appoint a day-to-day manager in a S.á r.l.;
- possibility for the articles of association to allow video-conferences and correspondence voting forms for general meetings in a S.á r.l.
- creation of a legal framework for the issuance of redeemable shares in a SA (more flexible);

Existing companies have two years (24 months) to comply with the new provisions of the new Company Law, except for mandatory provisions in the new Company law that apply by operation of law.

For more information and tailor made advice and assistance please contact Willem Gerbers and Marlous Berkenbosch. They look forward to assist you.

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