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New law rectifying the law of 10 August 1915 on commercial companies

On 19 July 2023, the Chamber of Deputies adopted the draft law N°8007, the purpose of which is to modify the law of 10 August 1915 on commercial companies as amended (the “**1915 Law**”), the law of 19 December 2002 on the trade and Company Register and companies and on bookkeeping and annual accounts of companies as amended (the “**2002 Law**”), the law of 24 May 2011 concerning the exercise of certain rights of shareholders at general meetings of listed companies, and the civil code.

The main purpose of the new law is to correct certain material errors or omissions contained in the 1915 Law and resulting from the significant reform carried out on the occasion of the law of 10 August 2016. The new law also aims to update the references to the various European directives or laws that have been amended or repealed, as well as the references to the 1915 Law contained in the 2002 Law, by replacing the old numbering with the new one resulting from the Grand-Ducal Regulation of 5 December 2017.

Among the changes thus adopted are the following provisions:

- > A definition of Member State is inserted in the 1915 Law (to the extent in particular that some European directives and regulations apply not only to the European Union but also to the European Economic Area);
- > The leonine clauses contained in the constitutive act of a special limited partnership (*société en commandite spéciale*) are deemed unwritten and do not entail the nullity of the entire constitutive act, as it is already the case for common limited partnerships (*société en commandite simple*);
- > Suspended voting rights and voting rights whose waiver has been notified to the company are not taken into account for the calculation of the quorum and majorities of general meetings of public companies limited by shares (*sociétés anonymes*);
- > The obligation for Luxembourg public companies limited by shares (*sociétés anonymes*) in the event that their bond loan is governed by Luxembourg law, and the obligation for foreign companies that submit their bond loan to Luxembourg law, to submit such bond loan to the provisions of Articles 470-3 to 470-19 of the 1915 Law, defining among other things the rights of bondholders, is abolished (this obligation has already been partly abolished in the past, but the law now further clarifies the matter);
- > Redeemed shares are not taken into account for the calculation of quorums and majorities in general meetings or written consultations of private limited liability companies (*sociétés à responsabilité limitée*);
- > The shares for which the voting rights have been suspended, as well as those for which the shareholder has notified a waiver of the voting right, are not taken into account for the calculation of the quorum and the majorities in the general meetings or written resolutions of private limited liability companies (*sociétés à responsabilité limitée*);
- > The requirement for the presence of a shareholder or his representative at the registered office of the company during a general meeting of a private limited liability company (*société à responsabilité limitée*), held by videoconference or other means of telecommunication, is abolished;
- > The new law deletes the wording “*with the consent of the transferring shareholder*” in Article 710-12 (1) paragraph 4 and replaces it with the wording “*unless the transferor gives up the transfer of his shares*”, in order to clarify that the transferor of shares in a private limited liability company (*société à responsabilité limitée*) does not have a veto right in the event of redemption of his shares by the company; this same paragraph is also corrected in order to specify that the repurchase of shares by the company can be carried out with or without decrease of the share capital;
- > The decision relating to the liquidation mode and the identity of the liquidators of a private limited liability company (*société à responsabilité limitée*) now requires the consent of shareholders representing three quarters of the share capital, as it has been the case since the law of 10 August 2016 for all amendments to the articles of association, without the requirement of a double majority in terms of number of shareholders and shares;
- > The criminal liability of managers (*gérants*) and directors (*administrateurs*) is extended to the failure to make the annual accounts available at the company's registered office.

The new law will enter into force four days after its publication in the Official Journal (Memorial A).

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