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Towards deferred payment of the minimum share capital of SARL

Bill No. 8669 (the **Bill 8669**), which aims to allow for the deferred payment of the share capital of the *société à responsabilité limitée* (private limited liability companies) (**SARL**), has just been filed with the Luxembourg Chamber of Deputies.

1. WHAT?

In practical terms, the Bill 8669 would allow the founders of a Luxembourg SARL no longer to be required to pay up immediately the full minimum share capital of EUR 12,000 at the time of incorporation, while maintaining the requirement for full subscription, and to defer payment for up to twelve months following incorporation.

2. WHAT IS THE CURRENT RULE?

Under the Luxembourg law of 10 August 1915 on commercial companies, as amended (the **1915 Law**), any SARL must ensure that:

- > its minimum share capital, amounting to EUR 12,000, is fully subscribed, and
- > fully paid up at the time of incorporation.

In practice, this entails:

- > the prior opening of a bank account,
- > the blocking of funds before the company legally exists, and
- > sometimes significant delays due to banks' KYC / AML requirements.

3. PROPOSED CHANGE?

Bill 8669 proposes to introduce a new, optional, flexibility regime for SARL:

- > the share capital must still be fully subscribed at incorporation;
- > however, its payment may be deferred, in whole or in part, as well as that of any issue premium, if applicable,
- > for up to twelve months following the date of incorporation.

4. LIMITATIONS?

Several protective limitations are nevertheless provided for:

- > only cash contributions may benefit from the deferred payment regime;
- > contributions in kind must continue to be fully paid up at incorporation
- > any amount of share capital exceeding the statutory minimum must be paid up immediately
- > any subsequent share capital increases will remain subject to immediate payment including any related issue premium.

5. RATIONALE OF THIS REFORM?

Several objectives are pursued:

- > to modernise the 1915 Law;
- > to facilitate and accelerate the incorporation of SARL particularly in a context where opening a bank account may be time-consuming;
- > to strengthen the competitiveness of the Luxembourg market compared to other European jurisdictions that already offer greater flexibility;
- > to address the practical needs of (i) entrepreneurs, (ii) investment structures, and (iii) investment funds required to set up acquisition vehicles rapidly.

The objective is clear: to remove a practical obstacle without calling into question the principle of a minimum share capital.

6. SAFEGUARDS?

Bill 8669 provides for several important safeguards to protect the company, its shareholders and third parties:

- > enhanced liability of the founders regarding the effective payment of the share capital;
- > publication of the list of shareholders whose shares have not yet been fully paid up;
- > suspension of voting rights attached to shares whose subscription price has not been paid despite a valid call for funds;
- > liability regime for transferors and transferees inspired by that applicable to public limited liability companies;
- > transparency obligations, requiring disclosure in corporate documents of the portion of share capital not yet paid up.

Controls relating to anti-money laundering and counter-terrorist financing remain otherwise unchanged.

CONCLUSION

By opening the door to the deferred payment of the minimum share capital of SARL, Bill 8669 marks a further significant step in the ongoing modernisation of Luxembourg corporate law, striking a balance between operational flexibility and legal certainty.

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