

## Luxembourg Newsflash

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The revamping of some unclear provisions of the 1915 law pursuant to 2016 reform.

The law of August 10, 1915 on commercial companies (the “1915 Law”) was the subject of a major reform completed by the adoption of the law of August 10, 2016 modernizing the amended 1915 Law and modifying the Civil Code and the law of December 19, 2002 concerning the register of commerce and companies as well as accounting and the annual company accounts.

The 2016 reform of the 1915 Law brought improvements and innovations which have already been largely exposed and debated. However, the attention brought to the drafting work was not immune to certain material errors or omissions. Furthermore, the implementation of some new provisions of the 1915 Law have brought to light certain inconsistencies or uncertainties that it seemed useful to address after having been tested by practitioners. In that context, the Ministry of Justice lodged the bill no. 8007 on May 17, 2022 in order to fix the clerical mistakes and to clarify the issues created by some of the innovations of the 2016 reform. The bill no. 8007 has since been commented by the Luxembourg chamber of commerce (on June 27, 2022) and by the *Conseil d’Etat* (on June 28, 2022).

The bill no. 8007 provides for many changes some of which are purely clerical or grammatical. On top of these petty changes, the following improvements / clarifications will be brought by the bill no. 8007 once it is enacted:

- (i) Clarification of the quorum and majority rules
  - Article 450-1 (9) of the 1915 Law provided (i) for the possibility for board of directors of an SA to suspend the voting rights of the shareholders which were in breach of their obligations (statutory or other) and (ii) for the possibility for any shareholder to voluntarily waive the voting rights attached to their shares (temporarily or definitively). However, the 1915 Law was silent as to whether the shares deprived of voting rights were to be taken into account or not for the calculation of the quorum and of the majority. The bill no. 8007 will add a third paragraph to the above-mentioned provision to clearly state that such shares will not be taken into account for the quorum and majority at shareholders’ meetings.
  - Article 710-19 (which is the equivalent for the SARLs of the above discussed article 450-1 (9)) will be modified in the same terms to clearly exclude the shares which voting rights have been suspended or waived to be taken into account for the quorum and majority at shareholders’ meetings.
  - Article 710-5 (6) of the 1915 Law will be modified to provide that redeemed shares of an SARL shall not be taken into account for the calculation of the quorum and of the majority at shareholders’ meetings (as it is provided for SAs in article 430-18 of the 1915 Law).
  - Article 1100-2 (1) third sentence of the 1915 Law will be modified to provide that the majority necessary to liquidate an SARL will be the three-quarters of the share capital, where the current wording kept the double threshold majority rule (more than half of the shareholders representing three-quarters of the share capital) which was abolished for the other extraordinary decisions by the 2016 reform.

- (ii) The procedure of the article 710-12 (transfer of shares of an SARL to a non-shareholder)
  - Article 710-12 (1) paragraph 1 and 3 of the 1915 Law were misleading: according to paragraph 1, the approval of the share transfer must be given by the shareholders and then paragraph 3 stated the applicable procedure in case of refusal of the share transfer by the company (sic). Paragraph 3 will be amended in order to discard this reference to “the company” making clear that the approval or refusal of a non-shareholder is resolved upon by the shareholders of the company (and not the company itself).
  - Article 710-28 will be modified to provide that when an SARL has a sole shareholder, the latter does not need to comply with the provisions of article 710-12 to approve the transfer of shares to a non-shareholder.
- (iii) The clarification of the possibility for the managers of an SARL having a sole shareholder to transfer the registered office of the company
  - Article 710-28 will also be modified to confirm that it is possible for the managers of an SARL having a sole shareholder to transfer the registered office of the company within the same municipality or in another one and to modify the articles of association accordingly. The current wording of article 710-28 is misleading on that point.

We will keep you updated as soon as the bill no. 8007 is adopted.

Should you want to know more on this topic, please do not hesitate to reach out to our corporate experts in Luxembourg.



**Michaël Meylan**  
Partner

[michael.meylan@strelia.com](mailto:michael.meylan@strelia.com)