



Luxembourg News

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FINANCIAL ASSISTANCE: USEFUL CLARIFICATION REGARDING THE NON-APPLICABILITY OF SUCH FINANCIAL ASSISTANCE TO LUXEMBOURG PRIVATE LIMITED LIABILITY COMPANIES (SARL)

This Summer, the Luxembourg Parliament has modified the second paragraph of article 1500.7 of the law of 10 August 1915 on commercial companies (the “Company Law”) to delete the terms « *ou de parts sociales* » (shares of private limited liability companies or “SARL”), mentioned two times and the terms « *dans le cas des sociétés anonymes* » (in the case of public limited liability companies).

This modification of the Company Law was published on 12 August 2021 (Official Gazette A607 of 12 August 2021, <http://data.legilux.public.lu/eli/etat/leg/loi/2021/08/06/a607/jo>) and came into force on 16 August 2021. This provision is part of section 1500 of the Company Law which deals with criminal sanctions.

Pursuant to the former text of article 1500.7 2), a term of imprisonment of between one month and two years and a fine of between 5,000 and 125,000 euros or only one of such penalties shall be imposed on any person who, as a director, statutory auditor, manager or member of the supervisory committee, knowingly would have (...) granted loans or advances using corporate funds or gives sureties for the purpose of the acquisition of shares of the company or taking on pledge of treasury shares, contrary to articles 430-19 and 430- 21 in the case of public limited liability companies; (“*qui auront fait des prêts ou avances au moyen de fonds sociaux ou donné des sûretés en vue de l'acquisition d'actions ou de parts sociales de la société ou pris en gage des actions ou des parts sociales propres et ce, contrairement aux articles 430-19 et 430-21 dans le cas des sociétés anonymes*”).

In public limited liability companies (“SA”), the possibility of financial assistance is very limited, subject to restrictive conditions and regulated by a set of mandatory formalities (in particular, the necessity for the management board to establish a report to justify the use of financial assistance). Articles 430-19 and 430-21 are applicable only to SA (and corporate partnerships limited by shares) and not to SARL.

By mentioning “parts sociales” [i.e. shares of private limited liability companies], this article led to the view that specific rules equivalent to those applicable to SA might also be applicable to SARL. However, the Company Law did not and does not contain any such restrictive rules and, in the absence of such rules, the legal practice and doctrine have always considered that financial assistance was permitted in SARL and not subject to such restrictive conditions. As a general principle of criminal law, criminal law shall be interpreted restrictively with no punishment in the absence of law.

However, the former wording of article 1500.7 2) had created confusion among practitioners and service providers of the Grand-Duchy of Luxembourg and many of them considered that rules applicable to SA should be applied *mutatis mutandis* to SARL, by analogy. Some are even of the view that there is a general principle of prohibition of financial assistance including for both SA and SARL.

This clarification of 12 August 2021 is therefore very welcome and should put an end to some unnecessary debate and cautious practice.



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It also has a true practical impact on the private equity and implementation of management packages for instance. It is common practice in Luxembourg for a SARL to implement management incentive packages for their staff and to grant loans to its executives and key managers to enable them to subscribe for shares of the SARL because such employees do not have the financial means for such subscription. The ambiguity of the former wording of article 1500-7 2) of the Company Law could deter private equity players from implementing such practice, which will no longer be the case. However, article 1500-7 (2) shall continue to be interpreted as prohibiting SARL from granting loans to a person to enable him/her to subscribe or acquire shares of the SARL if such loan is a loan secured by a pledge over shares of the SARL (to the benefit of the SARL as pledgee).



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