

During the last two years, Luxembourg has enacted a lot of major corporate laws to facilitate investments in existing and new Luxembourg vehicles as well as to increase the protection of investors. A strong emphasis has been put on securities, private equity and capital market regulation.

By doing so, Luxembourg succeeds in providing an enhanced level of legal certainty while maintaining a high level of flexibility.

Annual account law

According to the Luxembourg law dated December 19, 2002, the annual accounts of Luxembourg companies shall now be approved within six months as from the end of the financial year (previously 12 months) and have to be filed with the trade and companies register within one month following their approval. In addition, companies now have to use a mandatory chart of accounts.

The Ministry of Justice has said that the new time limit for the approval of the annual accounts is applicable to accounting years starting as of January 1, 2005.

Securitisation law

The securitisation law was implemented on March 22, 2004. It has reinforced the already existing attraction in Luxembourg of securitisation by clarifying and confirming the legal mechanisms that are usually used in securitisation and by offering a choice of several investment vehicles (companies or funds run by a management company) and a neutral tax regime.

The type of assets subject to securitisation is very wide and segregation of assets through compartments is provided by the law.

The law provides for high investor protection via enhanced bankruptcy remoteness and the creation of a new professional of the financial sector being 'the fiduciary representative'.

The benefit of these legal mechanisms is not conditioned by the supervision of supervisory authorities. The vehicle has to be regulated by the CSSF only when funds are raised in the public on a regular (continuous) basis.

SICAR (risk capital investment company) law

The société d'investissement en capital risque (SICAR) has been implemented by a law dated June 15, 2004 in order to offer a new regulated vehicle for investment in private equity to well-informed investors. It offers the advantages of a considerably flexible corporate structure for the sole purpose of investing in risk capital while simultaneously offering the benefits of the supervision of the CSSF as well as a neutral

tax regime.

As of mid-September 2006, 82 SICARS have been incorporated.

Prospectus law

The law dated July 10, 2005, relating to prospectus with respect to securities has implemented the Prospectus Directive 2003/71/CE dated November 4, 2003 (the provisions of which have been supplemented, in particular from a technical perspective, by EU Regulation 809/2004 dated April 29, 2004, regulation of which is directly applicable in Luxembourg since July 2005).

It achieves, at a Luxembourg level, the harmonisation sought by the Prospectus Directive ie (i) harmonisation and mutual recognition of prospectuses and (ii) harmonisation of information provided to the investors.

The law provides three different approval regimes:

- the European Passport regime (part II of

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the law);

- the domestic approval regime (part III of the law); and
- the approval regime applicable in case of listing on the newly created Luxembourg market known as Euro MTF Market (part IV of the law).

The CSSF is the competent Luxembourg authority when Luxembourg is the Home Member State.

Securities law

The August 2005 law on collateral arrangements has implemented the Financial Collateral Directive 2002/147/EC of June 6, 2002 and enhanced the already existing and satisfactory regime notably by reinforcing the right of the creditors in case of bankruptcy.



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estimated by an expert.

It also provides that the afore mentioned collateral arrangements remain valid and fully enforceable notwithstanding the commencement of insolvency proceedings against the grantor of the security. Secured assets covered by such security interest are therefore not included in the assets available for distribution to the general pool of creditors.

CSSF SICAR circular

In order to clarify the meaning of 'risk capital' in the framework of the SICAR, the CSSF issued a circular on April 5, 2006.

The circular states that risk capital can be characterised as the simultaneous combination of two principal elements, which are the existence of (i) a high-risk business and (ii) a desire to develop it.

The 'development' element includes for instance (i) the initial injection of capital in order to launch the business of the target company or to aid its listing on a stock exchange and/or (ii) the intervention of the SICAR in the management of the portfolio companies with the aim of allocating the resources in a more efficient manner. It also requires that the investment(s) be made for a certain period of time as well as there being an intention of selling it down the line in order to make a profit.

The 'high risk investment' element denotes the aim of obtaining a high return upon sale of an investment, which is not liquid per se.

Although the SICAR law does not include in its scope direct investment in real estate property, the circular has precised that indirect investments may be done through SICAR where such investments fulfils the above criteria.

Take over and market abuse laws

A law dated May 19, 2006 has transposed the directive 2004/25/CE of the European Parliament and of the Council of April 21, 2004 on takeover bids.

This law came into effect on May 22, 2006 and applied to all takeover bids in process as of that date.

As there was no prior existing law relating to this matter, the text of the Luxembourg law is very similar to the text of the directive and it is the CSSF which has been designated as the supervisory authority to ensure that the parties to a bid comply with the rules made or introduced pursuant to the new law.

The aim of this legislation is mainly

the protection of the shareholders of the targeted company and it hence provides for some mechanisms such as a detailed takeover document, a timeframe for the acceptance of such a takeover bid, the publication of certain specific information, squeeze-out rules, etc.

The law on market abuse has implemented four EU Directives on insider trading and market manipulation.

In addition to these laws, new rules have been enacted in relation to corporate governance rules applicable to listed companies and will come into force on January 1, 2007.

European Company law

On 12 July 2006, the law regarding the European Company was enacted, amending the law of August 10, 1915, regarding commercial companies and entered into force on September 4, 2006.

It implements the Council Directive 2001/86/EC of 8 October 2001 as well as the Council Regulation (EC) No 2157/2001 of October 8, 2001.

In introducing the European Company to Luxembourg law, the legislator made a certain number of changes to the rules applicable to public companies limited by shares (société anonyme or S.A.):

- A S.A. can now have one sole shareholder;
- it is now possible to choose a system of dual management (board and supervisory board);
- the rules of what constitutes a quorum and a majority have been clarified as well as the organisation and convening of the board and shareholders meeting (creation of the chairman role and casting vote of the chairman, long distance communication);
- it is now possible for a S.A. with a sole shareholder to have only one member on the board of managers, as opposed to a common SA where at least three directors are required.

It also may be noted that the registered seat of a European Company may be easily transferred from one EU Member State to another without the SE being dissolved or re-incorporated. The law also contains provisions in relation to the protection of employees' information, consultation and participation rights. ■

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This new law now covers the pledge of assets (contrat de gage), the transfer of ownership by way of security interest (transfert de propriété à titre de garantie), the repurchase agreements (mise en pension) and the netting arrangements. It covers a wide spectrum of assets such as (present and/or future) bank accounts, financial instruments (which include all type of securities) and/or receivables of the pledgor/transferor.

It provides for efficient and effective methods of enforcement for the pledge. In case of default, the pledgee is particularly entitled (i) to take ownership of the pledged assets at the price determined in accordance with the rules of valuation agreed between the parties, (ii) to sell the pledged assets by one of the various ways listed by the law (eg through an arm's length sale), (iii) to obtain a court decision stating that the pledged assets will be transferred to the pledgee as payment up to the amount of the debt owed as