

15/06/2023

New law on the use of digital tools and processes in company law

The Luxembourg Parliament has adopted, on 15 June 2023, a new law as regards the use of digital tools and processes in company law into Luxembourg law (bill of law n° 7968) (the “**New Law**”). The main objective of the New Law is the use of modern technologies throughout the life of a company. The New Law provides as follows:

Companies may be incorporated electronically

The New Law notably creates the possibility for any incorporation deed which shall or may be drawn by a Luxembourg public notary to be established electronically. For public limited liability companies (*sociétés anonymes*), corporate partnerships limited by shares (*sociétés en commandite par actions*), and private limited liability companies (*sociétés à responsabilité limitée*), the founders may sign the incorporation deed remotely.

The Luxembourg notary may refuse to draw up an incorporation deed in electronic format remotely only in limited specific cases:

- > when the payment of the company's share capital includes a contribution in kind; or
- > if there exists a suspicion of falsification of identity, or grounds for suspecting non-compliance with the rules aimed at ensuring that the parties to the deed have the necessary legal capacity and power to represent the company.

The notary may in that case require the physical presence of the party in order to remove any suspicion.

For documents drawn up in electronic format and signed remotely, the notary may further require the parties to use a qualified electronic signature within the meaning of Article 3, point 12, of Regulation (EU) n°910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. In any case and without prejudice to their final form (*i.e.*, whether electronic or not), all deeds besides testaments shall be established using the electronic notarial platform.

For companies incorporated by a contribution in cash, evidence of the payment of the share capital (*i.e.*, the blocking certificate) may also be provided electronically.

Amendment of the Luxembourg Civil Code and Luxembourg laws

The New Law amends the Luxembourg Civil Code, the Luxembourg law of 10 August 1915 on commercial companies, as amended (the “**Company Law**”), and the Luxembourg law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of companies, as amended (the “**RCS Law**”). The New Law establishes a legal framework for authentic instruments in electronic format. The New Law amends the Civil Code to introduce new Articles 1317-1 and 1317-2, which provide for an authentic instrument in electronic format by laying down the principle and minimum conditions that authentic instruments in electronic format must meet in order to be valid as such and benefit from the legal effects that the Civil Code confers on them in terms of evidence. It also amends the Company Law to allow incorporation in electronic form without a physical appearance.

Individual registration of branches with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés*)

In view of a better identification, each Luxembourg branch of a company will be registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés*) under a specific registration number.

In addition, Luxembourg public limited liability companies (*sociétés anonymes*), corporate partnerships limited by shares (*sociétés en commandite par actions*) and private limited liability companies (*sociétés à responsabilité limitée*) having(a) branch(es) in the European Union will have the latter also registered in the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés*).

It is foreseen that such processes, together with the update of the information required by the RCS Law, will be automatically performed by the corporate registers (exchanging information to the extent necessary), without intervention of the companies.

The registration of Luxembourg branches of Luxembourg companies would ensure that filings in relation to each specific branch may be made and that information in relation to one specific branch may be consulted, which will be particularly useful for Luxembourg branches of Luxembourg companies and, more generally, for companies having multiple branches.

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