

Newsflash | July 2023

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

On 15 June 2023, a new law was adopted by the Luxembourg Parliament transposing Directive (EU) 2019/1151 on the use of digital tools and processes in company law (bill of law n°7968).



### General

The aim of this new law dated 7 July 2023 and published on 18 July 2023 is to simplify the incorporation of companies and the opening of a branch of a company in another member state by digitalising the notarial profession.

Public limited liability companies (*société anonymes*), private limited liability companies (*sociétés à responsabilité limitée*), limited partnerships (*sociétés en commandite simple*) and corporate partnerships limited by shares (*sociétés en commandite par actions*) can now be incorporated electronically with or without physical appearance of the founders.

The Luxembourg notary may only refuse to proceed with an electronic incorporation deed when:

- The company's share capital is being paid (partially or entirely) by a contribution in kind; or
- There exists a suspicion of falsification of identity, or grounds for suspecting non-compliance with the rules aimed at ensuring that the parties have the necessary legal capacity or power to represent the company.

For documents drawn up electronically 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.

Besides testaments, all notarial deeds may be established by electronic format subject to the provisions of the new law. When using the electronic format, the notary is obliged to use the new electronic notarial platform.

On the other hand, no matter the format of the notarial deed, the new law does not affect the general principle of the notary's responsibility and notary's intervention, a trusted third party, as the basis of the authenticity of the notarial deed. It is the notary's responsibility to verify the accuracy of the identities of the parties to the deed and of the statements and certifications in the deed. The notary also remains liable for any legal obligations imposed on him/her by other legal provisions.

## Individual registration of branches with the Luxembourg Register of Commerce and Companies

Both branches created by Luxembourg companies in Luxembourg and in other EU member states shall be registered with the Luxembourg RCS so that comprehensive and accessible information shall be available.

## Amendment of the Luxembourg Civil Code and other 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**").

Articles 1317-1 and 1317-2 of the Civil Code are introduced to provide for the possibility of electronic authentic deeds and providing minimum conditions necessary for their validity.

## Entry into force

The new law shall come into force on 1 August 2023.

## Contacts



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