

Welcomed clarification on the financial assistance measures applicable to Luxembourg Saï€rls



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A welcomed clarification on the financial assistance regime applicable to private limited liability companies (*société à responsabilité limitée*, or *Sàrl*) will be introduced in Article 1500-7 of the amended Luxembourg law of 10 August 1915 on commercial companies (the “Luxembourg Companies Law”).

For that purpose, the draft law n°7791 will update the Luxembourg Companies Law in order to correct and remove what seemed to be a clerical error arisen during the legislative work on the modernisation of the Luxembourg Companies Law in 2016.

Currently, Article 430-19 of the Luxembourg Companies Law, as amended, provides that a Luxembourg public limited liability company (société anonyme) may not, directly or indirectly, advance funds, extend loans or provide security with a view to the acquisition of its own shares by a third party (the financial assistance prohibition). However, Article 1500-7 2° of the Luxembourg Companies Law, as amended, provides that penalties may also be imposed on a manager (gérant) of a Sàrl which provides financial assistance with a view to the acquisition of its own shares (parts sociales) or a pledge of the company's shares (parts sociales). The clerical error (i.e., the reference to shares (parts sociales) of a Sàrl) found in point 2° thus generated hesitation and questions as to whether or not the financial assistance prohibition set out in Article 430-19 which is applicable to public limited liability companies (société anonyme) also applies to private limited liability companies (société à responsabilité limitée).

Once the upcoming amendment is enacted, the Luxembourg Companies Law will be clear in stating that the provisions of Articles 430-19 and 1500-7 2° of the Luxembourg Companies Law do not apply to private limited liability companies (société à responsabilité limitée).

Nonetheless, Article 1500-7 of the Luxembourg Companies Law continues to prescribe criminal punishment for the managers of Sàrls in points 1° (when they have recourse to share

redemptions by reducing the share capital or the legal reserve below the minimum amount) and 4° (when they make payments on the shares or admit payments as being made, which have not actually been made in the manner and at the times prescribed).

Finally, the draft law n°7791 includes an updated and coordinated version of the Luxembourg Companies Law.