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Luxembourg to amend company law to clarify the applicability of financial assistance rules to SARLs

On 16 March 2021, Draft Law N°7791 (the “Draft Law”) was submitted to the Luxembourg Parliament to amend Article 1500-7 (2) of the Luxembourg law on commercial companies of 10 August 1915, as amended (the “Law”) to rectify a long lasting uncertainty regarding the (non) applicability of financial assistance rules to Luxembourg private limited liability companies (SARLs).



Applicability of financial assistance rules

Under Luxembourg law, financial assistance can be defined as the direct or indirect advancing of funds, granting of loans or provision of security by a company in view of the acquisition of its own shares by a third party.

The financial assistance prohibition is governed by Article 430-19 of the Law and is criminally sanctioned according to article 1500-7 of the Law.

However, despite the fact that the prohibition mentioned in Article 430-19 focuses on SAs and SCAs, Article 1500-7 clearly refers to SARLs (mentioning that the criminal consequences may also apply to “managers” (*gérants*) of a SARL and referring in Article 1500-7 (2) to the notion of “corporates units” (*parts sociales*)).

This has given rise to numerous debates on whether financial assistance rules are applicable or not to SARLs, as the reference to “*parts sociales*” was interpreted by some authors

as an extension of the prohibition of article 430-19 of the Law to SARLs, whereas others believe it simply was a clerical error of the legislator.

With the deletion of all the references to “corporates units” (*parts sociales*) in article 1500-7 (2), proposed by the Draft Law, the legislator’s intention will be clarified:

- the financial assistance prohibition is not applicable to Luxembourg SARLs.

Adoption of the Draft Law

Once this contemplated and very welcomed clarification is adopted, the flexibility of SARLs will be re-enforced in particular within the framework of private equity transactions and the related required financings.

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