

## Luxembourg draft bill introducing deferred payment of the minimum share capital for SARLs



On 16 December 2025, the Luxembourg government submitted a draft bill, n°8669, amending the law of 10 August 1915 on commercial companies (the “1915 Law”), introducing the possibility to defer the payment of the minimum share capital of private limited liability companies (sociétés à responsabilité limitée – “SARLs”).

Under the proposed regime, the statutory minimum share capital of EUR 12,000 must remain fully subscribed at incorporation, but its payment may be deferred for up to twelve months following the incorporation date. The draft bill aims to modernise Luxembourg company law, enhance flexibility at the incorporation stage and strengthen the competitiveness of the Luxembourg corporate framework.

### Background: addressing practical constraints at incorporation stage

Currently, Luxembourg SARLs are required to fully subscribe and fully pay up their share capital at the time of incorporation. This requirement, inherited from historical legislation dating back to 1933, no longer reflects current business realities.

In practice, the obligation to fully pay up the share capital at incorporation often entails opening a bank account prior to the legal existence of the company, which may cause delays due to increasingly stringent AML/KYC procedures.

This constraint can be particularly burdensome in transactional contexts where SARLs need to be incorporated on short notice.

By contrast, Luxembourg law already allows deferred capital payment for other corporate forms, and several neighbouring jurisdictions permit partial payment or no minimum capital requirement at all. The draft bill therefore seeks to realign the SARL regime with market practice while maintaining appropriate safeguards.

### Main changes introduced by the draft bill

#### ■ Deferred payment of the minimum share capital

The draft bill revises Article 710-6 of the 1915 Law by clearly distinguishing between subscription and payment of the share capital:

- the share capital must be fully subscribed at incorporation;
- the payment of the minimum share capital of EUR 12,000 may be deferred for up to twelve months, unless a shorter period is provided for in the incorporation deed.

This deferred payment mechanism is limited to cash contributions. Contributions in kind must continue to be fully paid up at incorporation. Any share capital exceeding the statutory minimum must also be fully paid up at incorporation.

#### ■ **Payment of share premium**

Where a share premium is provided for at incorporation, the current obligation of immediate payment remains.

#### ■ **No change to post incorporation capital increases**

Shares issued in the context of capital increases post incorporation must continue to be fully paid up at the time of issuance, as must any related share premium. The reform is therefore strictly limited to facilitating the incorporation of new SARLs.

## **Governance aspects and role of the articles of association**

The draft bill places particular emphasis on the role of the articles of association, which must define the procedures and timing for payment of the deferred share capital. In practice, the articles may:

- set fixed payment deadlines;
- provide for staged payments; or
- authorise the management to make capital calls based on the company's liquidity needs.

As regards incorporation formalities, the notary remains responsible for verifying the full subscription of the share capital and, where applicable, the partial or full payment of the capital at incorporation. The notary is not required to verify subsequent payments of deferred capital.

## **Safeguards and protection of third parties**

To offset the increased flexibility, the draft bill introduces a set of safeguards largely inspired by the regime applicable to public limited liability companies.

#### ■ **Liability of founders**

Founders remain jointly and severally liable for the effective payment of the share capital, whose payment has been deferred beyond incorporation.

#### ■ **Liability regime upon transfer of unpaid shares**

Where shares that are not fully paid up are transferred:

- the transferor is released, vis-à-vis the company, from liability for debts incurred after the transfer, and vis-à-vis third parties, from debts incurred after publication of the transfer;
- the transferor retains a joint and several recourse against the transferee and subsequent transferees.

#### ■ **Suspension of voting rights**

Voting rights attached to shares for which payment has not been made despite a valid and due capital call are suspended for as long as the default persists.

#### ■ **Transparency requirements**

The draft bill introduces an obligation to publish, alongside the annual accounts, a list of shareholders who have not yet fully paid up their shares, indicating the outstanding amounts.

## **Scope of application and SARL-S**

The new regime applies to all SARLs and simplified SARLs (SARL-S) incorporated after the entry into force of the law. The draft bill clarifies that the deferred payment mechanism applies to all cash contributions made at incorporation of a SARL-S.

## **Practical implications for founders and advisors**

The draft bill significantly enhances flexibility at incorporation stage and increases the attractiveness of Luxembourg while preserving the creditor protection framework. In practice, founders are encouraged to:

- carefully draft the articles of association to structure the deferred payment mechanism;
- assess the interaction between deferred capital payment and financing arrangements; and
- ensure compliance with transparency, suspension of voting rights and capital call procedures.

## **Next steps**

The draft bill is currently subject to the legislative process, including review by the Council of State and parliamentary deliberations. Once adopted, the new regime will apply to incorporations after the law's entry into force.

In parallel to the ongoing parliamentary process, the draft bill is now being reviewed by various professional bodies, including the Luxembourg Chambre des Notaires. In its opinion of 26 February 2026, the *Chambre des Notaires* acknowledges the practical issues the reform seeks to address but raises a number of reservations, notably regarding the use of imprecise terminology, the practical implementation of deferred payment of capital, the potential impact on creditor protection and the transparency of capital payments, as well as the compatibility of the proposed mechanism with anti-money laundering and counter-terrorist financing obligations.

For further information or to stay up to date on this topic, please feel free to reach out to the contacts listed on this article or your usual Luther S.A. contact.

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