AMMC Law

LAW OF 6 APRIL 2013 ON DEMATERIALIZED SECURITIES

The Luxembourg law of April 6, 2013 on dematerialised securities (the "**Law**") entered into force on April 19, 2103. The main innovation of this Law is the introduction in the Luxembourg legal system of dematerialised securities, alongside the other two existing forms of securities: bearer and registered.

THE CONCEPT OF DEMATERIALISATION

Dematerialised securities are securities that are not evidenced by any paper support documentation and that come into existence by their book-entry into an issuance account (*compte d'émission*) opened in the name of the issuer.

Under the Law, securities having similar characteristics (e.g. all of the equity securities constituting one category or one class of shares or all of the debt securities denominated in the same currency, having the same nominal value and relating to the same issuance) are credited to one single issuance account. The issuance account is maintained by either a central account keeper (*teneur de compte central*, as defined in the Luxembourg law of April 5, 1993, on the financial sector, as amended (the "**93 Law**")), or a securities clearing and settlement system (*organisme de liquidation*, as defined in the Luxembourg law of December 10, 2009 on payment services, as amended) such as, for instance, Clearstream Banking S.A.. The choice of who maintains the issuance account is made by the governing body of the issuer. However, for listed securities, the selection is limited to securities clearing and settlement systems, which are the only ones permitted to maintain issuing accounts for such securities.

The issuance account records all the dematerialised securities of the issuer, which are then credited, at each intermediate level, to the securities accounts held by various account keepers in the name of different account holders. As such, the designated central account keeper or the securities clearing and settlement system will be responsible for ensuring that the number of dematerialised securities credited on the issuance account is at all times equal to the number of dematerialised securities credited on the various securities accounts of the holders.

Dematerialised securities are validly transferred by way of book-entry with an account keeper on a securities account. The holder of the dematerialised securities will therefore not necessarily be directly related to the keeper of the issuance account. Several levels of account keepers may exist between the account keeper with whom the holder will have opened a securities account in its name, and the ultimate keeper of the issuance account.

THE SCOPE OF THE LAW

The scope of the Law expressly limits the list of entities as well as fungible securities that are eligible for the new regime. The eligible securities are limited to:

- Securities representing equity such as shares (*actions*), founders' or preferred shares (*parts bénéficiaires*) or subscription rights issued by joint stock companies (*sociétés par actions*) or units of mutual/investment funds; and
- Securities representing debt governed by Luxembourg law (irrespective of the governing law of the issuer thereof).

A notable exclusion is that of corporate units (*parts sociales*) issued by private limited liability companies (*sociétés à responsabilité limitée*), which are not eligible under the new regime.

ISSUANCE OR CONVERSION

Under the Law, creation of dematerialised securities can occur through:

- either the issuance of new securities in dematerialised form, or
- the conversion of existing securities into dematerialised securities.

In order to issue dematerialised securities, the issuer must:

1. include provisions in its articles of association or management regulations, that allow for the issuance of such dematerialised securities and provide the applicable rules;
2. undertake appropriate measures in order to register the whole set of dematerialised securities to be issued with one central account keeper or one securities clearing and settlement system; and
3. publish the identity of the chosen central account keeper or securities clearing and settlement system in a newspaper of nationwide distribution, or on the issuer's website, if any.

In order to have debt securities issued in dematerialised form, only the formality set in (2) above is required.

Conversion of securities may be compulsory or optional (at the will of the issuer). In case of optional conversion, a minimum two-year period for conversion must be offered to the securities holders.

Bearer securities would be converted by their remittance to the issuer and their subsequent destruction by the issuer. Registered securities are converted by their book-entry into the securities account maintained by an account keeper and opened in the name

of the securities holder. For that purpose, the holder of securities is in charge of providing the issuer with the details of the relevant account keeper and account.

The Law provides that the account keeper may only credit the account of its client once the securities are credited to the account held at a higher level. This system prevents that the aggregate number of securities credited to the accounts at any and all levels exceeds the total number of securities in circulation.

In case of compulsory conversion, failure by the securities holder to convert may be sanctioned by the suspension of its voting rights and postponement of distributions in connection with those securities, until conversion. The articles of association or the management regulations may provide for the forced sale of securities, if the holder has failed to convert its securities within a specified delay that may not be less than eight years from the date of the general meeting having decided on the compulsory dematerialisation.

PROTECTION OF SECURITIES HOLDERS

In order for the holders to exercise their rights against the issuer and third parties, the account keeper may issue certificates to securities account holders.

In relation to the attendance at the general meeting, the Law provides that only the securities held at the latest on the 14th day before the general meeting are taken into account. This timeframe allows the account keeper to issue the relevant certificates. For the purpose of attending the general meeting, the issuer may require that the securities holder prove registration of its securities through the chain of securities accounts from the relevant account to the issuance account.

With regard to distribution of funds (dividends, interest), the issuer is validly discharged by the transfer of funds to the central account keeper or the securities clearing and settlement system. Discharge operates the same way at each intermediate level until the final investor receives the proceeds it is entitled to.

Issuance accounts may not be subject to any attachment or seizure or otherwise blocked in any way by an account holder, a counterpart or a third party (other than the central account keeper or the securities clearing and settlement system), and the securities credited on such account are not eligible for set off. Furthermore, in case of insolvency, these securities shall be set aside from the insolvency assets.

In case of insolvency of an account keeper, the securities holder has a direct claim against such account keeper. Where the dematerialised securities of the same type held by the account keeper on behalf of third parties are not sufficient to pay off the securities holders, the claim extends to the securities held by the account keeper in its own estate.

THE IMPACT ON EXISTING SECURITY INTERESTS

The Law expressly provides that the conversion of existing securities shall not affect the existence and effectiveness of pledges granted on such securities, to the extent they are

governed by Luxembourg law. Such pledges shall remain in full force and effect without requiring further action. In case the pledged securities are held on a securities account, the account keeper will however need to be notified of the existence of such pledge upon registration of the pledged dematerialised securities.

In the case of compulsory conversion, the pledgor and the pledgee may agree on the person who will be in charge of carrying out the required formalities for the purpose of the dematerialisation procedure. Should the pledgor fail to take the necessary steps for dematerialisation within the required timeframe, the pledgee will be authorised to perform any required actions and the pledged dematerialised securities shall then, unless otherwise provided, be registered in a securities account opened in the name of the pledgee.

THE CENTRAL ACCOUNT KEEPER

Alongside the securities clearing and settlement system, the central account keeper becomes a new category of financial sector professionals (PSF). As a result, the setting up of a PSF requires compliance with the conditions set out in the 93 Law.

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