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The Legal 500 Country Comparative Guides

Luxembourg
CORPORATE GOVERNANCE

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This country-specific Q&A provides an overview of corporate governance laws and regulations applicable in Luxembourg.

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1. What are the most common types of corporate business entity and what are the main structural differences between them?

Luxembourg corporate law offers a variety of different company types adapted to the needs of a global financial centre. The most common company types include private limited liability companies (*société à responsabilité limitée*, **S.à r.l.**), public limited liability companies (*société anonyme*, **SA**), partnerships (*société en commandite simple,* **SCS**, and *société en commandite spéciale*, **SCSp**), partnerships limited by shares (*société en commandite par actions*, **SCA**) and simplified joint-stock companies (*société par actions simplifiée, SAS*).

The shares of an SA and SCA are eligible to be listed and admitted to trading on the regulated market of an EU/EEA stock exchange (**Issuers**). Private limited liability companies and partnerships are usually not suitable for listing purposes, even though there are listing solutions available for certain partnership fund structures. The SA is the most common company type of Issuers and will be the main focus of this chapter.

2. What are the current key topical legal issues, developments, trends and challenges in corporate governance in this jurisdiction?

While the sustainability disclosure requirements, notably under the Taxonomy Regulation (EU) 2020/852 (**EU Taxonomy**), the Sustainable Finance Disclosure Regulation (EU) 2019/2088 (**SFDR**) and the Corporate Sustainability Reporting Directive (EU) 2022/2464 (**CSRD**), continue to pose a challenge for market participants in Luxembourg, the following topics are also in the centre of attention of Luxembourg legislator:

- The Luxembourg Parliament has approved a new law (**Blockchain III Law**) transposing the EU DLT Pilot Regime into national law and recognising the possibility of using distributed ledger technology (**DLT**) instruments for financial collateral arrangements to promote the application of innovative technologies in the financial sector, while still preserving investor protection, market integrity and transparency; and
- The Luxembourg law on the screening of foreign direct investments (**FDI Law**) was published to implement Regulation (EU) 2019/452 on the screening of foreign direct investments (**FDI Regulation**). The FDI Law introduces a national screening procedure for direct investments made by investors from a third country outside the EU/EEA wishing to gain control over Luxembourg companies operating in sectors considered critical to national security or public order.

3. Who are the key persons involved in the management of each type of entity?

The SA is most commonly managed by a board of directors appointed by the general meeting of shareholders (one-tier structure). The board of directors may consist of executive and independent board members. In addition, the board of directors can choose to delegate some executive functions to a management team or CEO. The SA can also be organised in a two-tier structure consisting of a management board and a supervisory board. In Luxembourg, this structure is less frequently chosen.

Partnerships are usually managed by their general partner. The general partner is typically a private limited liability company managed by a board of managers or sole manager. Partnerships are less suitable for listing purposes, but are nevertheless an important company type for Luxembourg's fund sector.

4. How are responsibility and management power divided between the entity's

management and its economic owners? How are decisions or approvals of the owners made or given (e.g. at a meeting or in writing)

In Luxembourg, the board of directors of an SA is mainly responsible for the corporate governance of the company. The shareholders may resolve on certain matters reserved to them by law or the articles of association. Such matters include, among others, the appointment and dismissal of the directors, the approval of accounts, the granting of discharge, the appointment of the auditor, the amendment of the company's articles of association as well as decisions regarding capital increases or decreases, mergers, divisions or the company's liquidation.

Shareholders resolve by means of (i) ordinary general meetings where no quorum is required and decisions are made on a simple majority basis (unless provided otherwise in the articles of association or specific provisions of the law); and (ii) extraordinary general meetings where special quorum and majority requirements apply and a Luxembourg notary must be present.

5. What are the principal sources of corporate governance requirements and practices? Are entities required to comply with a specific code of corporate governance?

Basic corporate governance requirements are set out in the law of 10 August 1915 on commercial companies, as amended (**1915 Law**), which applies to all commercial company types in Luxembourg. In addition, the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, as amended (**2002 Law**), provides for specific disclosure rules.

Issuers are further subject to, among others:

- the Luxembourg law of 24 May 2011 relating to the exercise of certain shareholder rights in general meetings of listed companies, as amended (**Shareholder Rights Law**);
- the Luxembourg law dated 11 January 2008 on transparency requirements for issuers, as amended (**Transparency Law**);
- the Prospectus Regulation (EU) 2017/1129 (**Prospectus Regulation**) and the Luxembourg law of 16 July 2019 on prospectuses for securities, as amended (**Prospectus Law**); and
- the Market Abuse Regulation (EU) 596/2014 (**MAR**) and the Luxembourg law of 23 December 2016 on market abuse, as amended (**Market Abuse Law**).

The X Principles of Corporate Governance (**X Principles**) and the Rules and Regulations of the Luxembourg Stock Exchange apply to Issuers on the regulated market of the Luxembourg Stock Exchange.

6. How is the board or other governing body constituted? Does the entity have more than one? How is responsibility for day-to-day management or oversight allocated?

The SA may be organised in a one-tier structure where the main management body is the board of directors or a two-tier structure where the management responsibilities are shared between the supervisory board and the management board.

In a one-tier structure, the board of directors may resolve to delegate some management functions to a CEO, a management committee or a day-to-day manager, if so provided in the articles of association. The one-tier structure is the default structure if no choice is made.

In a two-tier structure, most of the management powers are conferred to the management board, except for the powers reserved by law or by the articles of association to the supervisory board or the general meeting of shareholders. The supervisory board gives advice and monitors the actions of the management board, but cannot provide instructions to the management board.

7. How are the members of the board appointed and removed? What influence do the entity's owners have over this?

In a one-tier structure, members of the board of directors are appointed and removed by decision of the general meeting of the shareholders. They are appointed for a limited time period of maximum six years. However, they can be re-appointed after this term, unless provided otherwise by the articles of association.

In a two-tier structure, only the members of the supervisory board are appointed by resolution of the general meeting of shareholders. They are appointed for a limited period of time, with a maximum of six years. They can be re-elected after this period, unless provided

otherwise by the articles of association. The members of the management board are appointed by the supervisory board, unless provided otherwise by the articles of association of the company.

8. Who typically serves on the board? Are there requirements that govern board composition or impose qualifications for board members regarding independence, diversity, tenure or succession?

In a one-tier structure, the board of directors comprises at least three members. A maximum of sixteen board members is recommended by the X Principles, in order to have an appropriate size to facilitate effective decision-making and to avoid undermining effective deliberations. Further, at least two directors have to be independent in accordance with the independence criteria set out in the X Principles.

In a two-tier structure, the supervisory board must be composed of at least three members. The management board is composed of at least three members (or at least one if the share capital of the company is less than EUR 500,000).

Selection criteria for board members of commercial companies are generally not mandatory, but minors, wards and persons who have been barred by court order following a serious misconduct in connection with bankruptcy are ineligible. Further, the X Principles require, besides skill-based criteria, that the board is composed of competent, honest and qualified persons and recommend on a 'comply or explain' basis to consider diversity criteria, including criteria relating to professional experience, geographical origin and the appropriate representation of both genders. The X Principles further recommend the appointment of board members whose experience and knowledge is complementary and useful considering the specific features of the company and its activities.

In Luxembourg, directors may be individuals as well as legal entities.

9. What is the role of the board with respect to setting and changing strategy?

The board of directors or supervisory board are the main organs responsible for defining the strategy of the company. The X Principles require the board of directors to specifically decide on the values and objectives of the company, its strategy, the key policies to be implemented and the level of risk acceptable to the company. The X Principles further recommend the integration of CSR aspects in the company's business strategy.

10. How are members of the board compensated? Is their remuneration regulated in any way?

Members of the board of directors and the management board/supervisory board may receive remuneration. The X Principles recommend the involvement of a remuneration committee consisting only of non-executive directors. Issuers are obliged to publish a remuneration policy, which shall clearly explain how the remuneration of directors contributes to the company's business strategy, its long-term interests and its sustainability. The remuneration policy is subject to a non-binding advisory vote of the general meeting. In addition, the company must provide a clear and understandable report in relation to the remuneration granted to the company's directors in the past financial year, which is also subject to a non-binding advisory vote of the general meeting.

11. Do members of the board owe any fiduciary or special duties and, if so, to whom? What are the potential consequences of breaching any such duties?

Director's duties are generally owed to the company. The main duties of directors and other members of the management bodies are the following:

- to manage the company with a certain level of diligence and prudence (*en bon père de famille*) on a best-efforts basis and without the requirement to meet a specific result;
- to ensure that the interest of the company prevails over their personal interests and to avoid any conflict of interest;
- to ensure that they have and maintain the necessary skills, qualities and time capacity;
- to avoid the disclosure of any confidential information.

With respect to the liabilities, the members of the management bodies may be held liable as follows:

- towards the company in the event that they committed a fault that damaged the company;
- towards the company or third parties if their conduct was in breach of the applicable law

and/or the articles of association. In this case, shareholders may individually act against the directors or members of the management committee if they prove to have been independently prejudiced;
- in accordance with tort regulation;
- in accordance with the provisions of the Criminal Code (*Code Pénal*) or the criminal provisions of the Companies Law.

12. Are indemnities and/or insurance permitted to cover board members' potential personal liability? If permitted, are such protections typical or rare?

Potential personal liabilities of directors may be covered by an insurance policy. In general, insurance policies exclude acts of gross negligence and/or wilful misconduct. Among Issuers and companies with a large and international shareholder base, insurance coverage for management liability is typical.

13. How (and by whom) are board members typically overseen and evaluated?

Board members are overseen by the general meeting of shareholders which has the power to grant them discharge or not. Further, shareholders can take enforcement actions against the members of the board in case of certain breaches (*see question 18*).

The remuneration of executive board members typically includes performance-based awards which may serve as a monetary evaluation of the board members' performance.

14. Is the board required to engage actively with the entity's economic owners? If so, how does it do this and report on its actions?

The board shall take the interests of the shareholders into account when managing the company. In this context, the board may engage actively with its stakeholders within the limits of the law, notably any applicable market abuse regulations.

Shareholders representing ten percent, or five percent in the case of Issuers, may request the board to answer questions before any general meeting. Shareholders also have the right to ask questions during the general meeting.

15. Are dual-class and multi-class capital structures permitted? If so, how common are they?

Luxembourg law allows companies to issue several classes of shares with different rights attached to each class of shares. They are common in private equity, venture capital and securitisation structures, notably to reflect waterfall distribution rights. Among Issuers in Luxembourg, such structures are less common.

16. What financial and non-financial information must an entity disclose to the public? How does it do this?

Issuers are subject to the disclosure requirements contained in the 2002 Law, the Shareholder Rights Law and the Transparency Law. Disclosures under the Transparency Law comprise periodic information, such as annual financial reports and half-yearly financial reports, and ongoing information, such as changes in shareholding or certain corporate events.

Periodic and ongoing information is usually published on the company's website and in addition disseminated through the Officially Appointed Mechanism (OAM) which shall ensure fast and non-discriminatory access in all EU member states. Financial statements and other basic corporate disclosures are also published in the Luxembourg Trade and Companies Register.

Currently, only Issuers who qualify as public interest entities and employ more than 500 employees are required to publish a non-financial report and fall under the non-financial disclosure requirements of the EU Taxonomy . However, with the adoption of CSRD in December 2022, the scope of the non-financial reports, renamed to corporate sustainability reports, as well as the number of entities required to establish such a report will be significantly extended. As of FY 2025, all large undertakings not currently in scope will be required to report on their corporate sustainability in accordance with CSRD and the European Sustainability Reporting Standards (ESRS), as delegated acts by the EU Commission. The requirements will be extended to all small and medium-sized Issuers as of FY 2026. The new corporate sustainability report under CSRD will be subject to limited assurance auditing and must be included in the company's management report.

Issuers must further disclose information about their directors' remuneration in a remuneration report and a remuneration policy. The remuneration policy shall explain clearly how the remuneration of directors contributes to the business strategy, the long-term

interests and the sustainability of the company.

17. Can an entity's economic owners propose matters for a vote or call a special meeting? If so, what is the procedure?

Shareholders of an SA representing at least one tenth of the capital have the right to request the convening or the adjournment of a general meeting.

Shareholders holding at least five percent of an Issuer's subscribed capital may put items on the agenda of the general meeting and table draft resolutions for items included or to be included on the agenda of the general meeting. The procedure shall be described in the convening notice of the relevant meeting.

18. What rights do investors have to take enforcement action against an entity and/or the members of its board?

Shareholders may take enforcement action against the management bodies in the following cases:

- Mismanagement: the members of the board of directors are liable for the execution of their mandate and the faults committed during the execution of such mandate. Shareholders, by decision taken in a general meeting, can seek enforcement actions against the board members in that respect.
- Responsibility in case of breach of the 1915 Law or the articles of association of the company. This action can also be sought by a single shareholder, if the latter has suffered a distinct violation differing from all other shareholders; and by a minority of shareholders representing at least ten percent of the share capital of the company.
- Shareholders can seek civil enforcement actions against members of the board of directors in case of fault (tortious conduct). This action can also be sought by a single shareholder. However, the person(s) invoking these articles must have suffered personal damage.
- Finally, criminal offenses may give rise to enforcement actions by the shareholders.

19. Is shareholder activism common? If so, what are the recent trends? How can shareholders exert influence on a corporate entity's management?

There is no specific regulation with respect to shareholder activism in Luxembourg. The legislation however provides for minority rights for shareholders, such as:

- rights for minority shareholders to convene general meetings or adding items to the agenda of the general meeting (*see question 17*);
- shareholders holding at least ten percent of the votes at the general meeting having resolved on the discharge may bring a minority action against the directors on behalf of the company; and
- shareholders owning at least ten percent of the share capital or voting rights are entitled to request information on management decisions with respect to operations of the company and its subsidiaries and may apply to have one or more experts appointed in case the management does not respond.

The involvement of institutional investors as well as activist shareholders is encouraged by policy makers and considered a fundamental requirement to achieve improved corporate governance within corporations.

20. Are shareholder meetings required to be held annually, or at any other specified time? What information needs to be presented at a shareholder meeting?

At least one annual general meeting shall be held on the date stated in the articles of association of the company, where applicable, and in any case no later than six months after the end of the company's financial year. The annual general meeting is presented with and approves, among others, the annual financial and non-financial statements, the result allocation, the distribution of a dividend, the remuneration report, the discharge of the directors and the appointment of the auditor. The board of directors may convene further general meetings at its discretion.

For the annual and ordinary general meetings, no minimum attendance is required, and a simple majority is sufficient for a resolution to be validly taken. Extraordinary general meetings are required to amend the company's articles of association (e.g. in connection with an increase/decrease of the share capital, the creation of authorised capital, a change of the corporate object). At least half of the share capital must be represented at the meeting, and the resolutions are

validly taken if at least two third of the represented capital votes in favour.

21. Are there any organisations that provide voting recommendations, or otherwise advise or influence investors on whether and how to vote (whether generally in the market or with respect to a particular entity)?

Luxembourg is a global financial centre and its Issuers have a global stakeholder base. Proxy advisors and corporate governance consulting firms are often consulted by shareholders of Issuers. Under the Shareholder Rights Law, they are subject to certain transparency requirements, notably concerning conflicts of interest and voting policies.

22. What role do other stakeholders, including debt-holders, employees and other workers, suppliers, customers, regulators, the government and communities typically play in the corporate governance of a corporate entity?

The X Principles require the board of directors/management board of Luxembourg Issuers to consider the interests of all stakeholders in their deliberations.

In Luxembourg, Issuers generally are not required to appoint representatives of the company's employees into management or supervisory positions. Companies employing more than fifteen employees are required to designate at least one employee delegate. The number of employee delegates as well as their participation and information rights concerning the company's employment policies increase gradually with the number of employees of the company.

23. How are the interests of non-shareholder stakeholders factored into the decisions of the governing body of a corporate entity?

The X Principles require the board of directors/management board of Luxembourg Issuers to consider the interests of all stakeholders in their deliberations. In addition, the board of directors/management board is required to consider the interests of employees in connection with a takeover, a cross-border merger and the remuneration of directors.

In addition, EU sustainability regulation has largely focused on disclosure requirements to induce management bodies to consider environmental and social matters material to the company's business, such as climate change, pollution, biodiversity and human rights in the value chain.

24. What consideration is typically given to ESG issues by corporate entities? What are the key legal obligations with respect to ESG matters?

ESG considerations have been a major focus of market participants within the EU due to the fast-paced and far-reaching legislative efforts of the EU Commission in this field. Luxembourg as financial centre has been supportive of these measures and aims to promote a harmonised, common baseline of ESG related requirements applicable to EU businesses by refraining from gold-plating or imposing additional national ESG requirements. The main legislative proposals and acts governing ESG issues by corporate entities are:

- In relation to ESG-related disclosures: EU Taxonomy (in force), CSRD (adopted, to be transposed into Luxembourg laws by June 2024) and SFDR (in force);
- In relation to supply chain due diligence: Corporate Sustainability Due Diligence Directive (proposed in 2022, provisional agreement reached in 2023, not yet adopted); and

In relation to board composition and remuneration: Directive (EU) 2022/2381 on gender balance on boards (adopted in 2022), and Shareholder Rights Law (in force).

25. What stewardship, disclosure and other responsibilities do investors have with regard to the corporate governance of an entity in which they are invested or their level of investment or interest in the entity?

Luxembourg does not have any stewardship laws. Shareholders are generally not required to disclose their intentions, plans or proposals with respect to their shareholding. However, institutional investors and asset managers are required on a comply-or-explain basis to develop and publicly disclose their engagement policy describing how they integrate shareholder engagement in their investment strategy and to disclose annually how their engagement policy has been implemented.

Shareholders of Issuers must notify the Issuer and the CSSF when their shareholding reaches, exceeds of falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 33.33%, 50% and 66.66% of the total shareholding of the company.

In connection with a takeover or merger, the bidder is required to disclose its intentions in relation to the target company with respect to certain matters. When the shareholding of one person alone or together with persons acting in concert reaches the threshold of 33.33% of the Issuer's voting rights, this person is required to make a mandatory takeover bid, addressed to all the holders of those securities. The decision to make a bid has to be made public by the offeror and the CSSF has to be informed of it.

26. What are the current perspectives in this jurisdiction regarding short-term investment objectives in contrast with the promotion of sustainable longer-term value creation?

Luxembourg generally considers short-termism as an issue and promotes a sustainable value creation with a long-term perspective. The Shareholder Rights Law aims at improving the corporate governance of Issuers towards sustainability, encouraging long-term shareholder engagement and promoting the issuer-shareholder dialogue. The X Principles emphasize long-term value creation by requiring the board of directors, among others, to serve all shareholders, to establish a remuneration policy which is compatible with the long-term interests of the company, to set up strict rules in relation to the company's risk management and to define its corporate social responsibility.

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