



# Luxembourg Now Allows Financial Assistance

A law of 10 June 2009, which implements Directive 2006/68/CE as regards the formation of public limited liability companies and the maintenance and alteration of their capitals, **allows now, in principle**, that a Luxembourg “*société anonyme*” (the “Luxembourg company”) may directly or indirectly, advance funds or make loans or provide security, with a view to the acquisition of its shares by a third party.

Such transactions are however subject to the **following conditions**:

- Such transactions shall be made at **fair market conditions**, especially with regard to **interest** received by the Luxembourg company and with regard to **security** provided to the Luxembourg company for the loans and advances granted by it.

- The **credit standing** of the third party acquiring the shares of the Luxembourg company or, in the case of a multiparty transaction, of each counterparty, must be **duly investigated**.

- The board of directors (*conseil d'administration*) or the managing board (*directoire*), as the case may be, of the Luxembourg company must submit the transaction for **prior approval to the general meeting of shareholders**, whereby the general meeting must decide in accordance with the rules for a quorum and a majority for an amendment of the Articles of Incorporation of such Luxembourg company.

- The board of directors (*conseil d'administration*) or the managing board (*directoire*), as the case may be, must provide the general meeting of shareholders with a **written report** which must set out the following information:

- The **reasons** for such transaction,
- The **interest** of the Luxembourg company in entering into such a transaction,
- The **conditions** on which the transaction is entered into,
- The **risks** involved in the transaction for the **liquidity** and the **solvency** of the Luxembourg company,
- The **price** at which the third party is to acquire the shares.



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- The aggregate financial assistance granted to third parties must **at no time** result in the **reduction of the net assets of the Luxembourg company below the aggregate of the subscribed capital and the non-distributable reserves** (taking hereby into account also any reduction of the net assets that may have occurred through the acquisition, by or on behalf of the Luxembourg company, of its own shares).

- In cases where **individual members** of the board of directors (*conseil d'administration*) or of the managing board (*directoire*) of the Luxembourg company or of the administrative or management body of a parent undertaking or such **parent company** itself, or **individuals** acting in their own name, but on behalf of the members of such bodies or the parent company are **counterparties** to such a transaction, a **special report** must be established by the statutory auditor (*commissaire aux comptes*) or the independent auditor (*réviseur d'entreprises*) of the Luxembourg company on which the general meeting of shareholders of the Luxembourg company must deliberate. This special report is to be seen as a **safeguard** to ensure that such transaction does **not conflict** with the Luxembourg **company's best interests**.

These new provisions will in particular increase the attractiveness and the use of Luxembourg special purpose vehicles (SPVs) for the structuring of acquisition finance and corporate finance transactions.

Do not hesitate to contact DSM for any further information in respect of the coming into force of this law.

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