

# Public Limited Company (PLC., Corp./SA) in Luxembourg

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## I. Legal structure of a Public Limited Company (PLC., Corp./SA)

1. Concept
2. Purpose
3. Formation
4. Shares and minimum capital
  - 4.1 Shares
  - 4.2 Minimum capital
  - 4.3 Transfer of shares
5. Company name
6. Organisation
  - 6.1 General meeting
  - 6.2 Board of directors
  - 6.3 Commissaire
  - 6.4 Management of the Company
7. Annual accounts
8. Liquidation

## II. Tax structure of a Public Limited Company (PLC., Corp./SA)

1. Corporate taxation
  - 1.1 Corporate income tax
  - 1.2 Municipal business tax
  - 1.3 Withholding tax
2. Net wealth tax

## III. Effective structure of a Public Limited Company (PLC., Corp./SA)

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The following text is an extract from LCG's brochure "Business Luxembourg Company Formation".

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*Your LCG Team*

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# Public Limited Company (PLC., Corp./SA) in Luxembourg

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## I. Legal structure of a Public Limited Company (PLC., Corp./SA)

### 1. Concept

A Public Limited Company (PLC., Corp./Société anonyme, SA) in Luxembourg is a corporation whose assets are wholly liable for the company's liabilities. Its shareholders are accordingly only liable to the extent of their respective contributions.

### 2. Purpose

A Public Limited Company (PLC., Corp./SA) in Luxembourg may be formed for the carrying on of commercial or non-commercial purposes and may take any form which is permitted by statute.

### 3. Formation

A Public Limited Company (PLC., Corp./SA) in Luxembourg is formed through the recording of its articles of association by a notary and their subsequent publication in the Official Bulletin (Mémorial C). Moreover, the articles of association are then lodged with Luxembourg's Trade and Companies Register. Following the afore-mentioned notarial recording, a Public Limited Company (PLC., Corp./SA) has unlimited legal capacity.

At least one natural or legal person is required for formation of a Public Limited Company (PLC., Corp./SA) in Luxembourg. The said person may be of any nationality and is not required to be resident in Luxembourg. Insofar as is not otherwise provided by the articles of association, a Public Limited Company (PLC., Corp./SA) will be formed for an unlimited duration with respect to time.

### 4. Shares and minimum capital

#### 4.1. Shares

A Public Limited Company (PLC., Corp./SA) in Luxembourg is permitted to issue bearer shares as well as registered shares. The shares may be issued with or without voting rights. In respect of registered shares, a share register requires to be kept.

#### 4.2. Minimum capital

The minimum capital of a Public Limited Company (PLC., Corp./SA) in Luxembourg is 31,000 EUR. This requires to be subscribed in full. When a Public Limited company (PLC., Corp./SA) is formed, at least 25% of the nominal value of every share requires to be paid up. Notwithstanding this,

bearer shares may only be issued once the company's capital is fully paid up. However, the said registered shares may be converted into bearer shares at this point.

The share capital of a Public Limited Company (PLC., Corp./SA) can be contributed in the form of a non-cash contribution or in the combined form of a non-cash contribution and a cash contribution. Non-cash contributions are valued by an independent auditor.

#### *4.3. Transfer of shares*

Bearer shares in a Public Limited Company (PLC., Corp./SA) in Luxembourg are transferred through the agreement and delivery of the bearer securities.

However, the transfer of registered shares is only effective on a Public Limited Company (PLC., Corp./SA) in Luxembourg if one of the following two criteria is satisfied:

- a) the existence of a transfer statement dated and signed by both the transferor and the transferee in the register of registered shares;
- b) the Public Limited Company (PLC., Corp./SA) has been notified of the transfer or the acceptance of the said transfer by the company in the form of a notarial deed.

### **5. Company name**

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The company name of a Public Limited Company (PLC., Corp./SA) in Luxembourg is able to be freely chosen insofar as an examination of the Trade and Companies Register shows that the chosen name has not already been allocated. It is a mandatory requirement that the company name ends with "AG" or "SA". It is not permitted that company name be the name of one of the company's shareholders.

### **6. Organisation**

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A Public Limited Company (PLC., Corp./SA) in Luxembourg is organised as follows:

#### *6.1. General meeting*

The general meeting of the shareholders has the most extensive powers to make all decisions affecting a Public Limited Company (PLC., Corp./SA) in Luxembourg. This includes, for example, a decision to amend the articles of association.

The ordinary general meeting must be convened annually at the date prescribed in the articles of association.

The board of directors as well as the commissaire of a Public Limited Company (PLC., Corp./SA) in Luxembourg can convene an extraordinary general meeting.

#### *6.2. Board of directors*

The board of directors is responsible for the management and representation of a Public Limited Company (PLC., Corp./SA) in Luxembourg and shall consist of at least one member (the director)

if the Public Limited Company (PLC., Corp./SA) has one shareholder or shall consist of three members if the company has more than one shareholder. The members of the board of directors may be natural as well as legal persons and are not required to be shareholders. In addition, no restrictions apply regarding the nationality or residence of its members. Moreover, the members of the board of directors are elected by the general meeting for a period of six years with the possibility of re-election.

### *6.3. Commissaire*

If a Public Limited Company (PLC., Corp./SA) in Luxembourg does not exceed two of the following upper limits, the supervision of a Public Limited Company (PLC., Corp./SA) in Luxembourg is the responsibility of one or more than one commissaire who may be a shareholder(s) or non-shareholder(s):

- a) A balance sheet sum of 3,125 million EUR
- b) A net turnover of 6,25 million EUR
- c) 50 full-time employees – taking the average for the year

If a Public Limited Company (PLC., Corp./SA) does exceed two of the upper limits outlined above, its books require to be inspected by one or more than one independent auditor.

### *6.4. Management of the Company*

The day-to-day management of a Public Limited Company (PLC., Corp./SA) in Luxembourg can be delegated by the board of directors to one or more than one member of the board of directors (administrateur-délégué).

## **7. Annual accounts**

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The annual accounts of a Public Limited Company in Luxembourg (PLC., Corp./SA) consist of the balance sheet, the profit and loss account and the notes thereto. Following their approval by the shareholders, the annual accounts will be lodged with Luxembourg's Trade and Companies Register and this will subsequently be published in the Official Bulletin (Mémorial C).

## **8. Liquidation**

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In the case where 50% of the company's share capital is lost, the members of the board of directors must convene a general meeting within two months. The said general meeting shall decide upon the potential liquidation of the Public Limited Company (PLC., Corp./SA) in Luxembourg. In the case where 75% of the company's share capital is lost, the company shall be liquidated if 25% of the votes cast at the general meeting were in favour of liquidation.

## II. Tax structure of a Public Limited Company (PLC., Corp./SA)

Since January 1<sup>st</sup>, 2013, a Public Limited Company (PLC., Corp./SA) in Luxembourg has been liable, as a corporation, to corporate taxation at an annual rate of 29.22%. The said rate consists of the following components:

### *1.1 Corporate income tax*

In Luxembourg, the rate of corporate income tax for income exceeding 15,000 EUR is 21% (or at a rate of 20% on income of up to 15,000 EUR) and is increased by the solidarity surtax of 7%.

The minimum payment of corporate income tax for all Public Limited Companies (PLC., Corp./SA) resident in Luxembourg which do not require a trade licence and the sum of their assets, securities and bank balance together exceed 90% of its balance sheet total is 3,210 EUR (3,000 EUR plus the 7% solidarity surtax).

### *1.2 Municipal business tax*

All businesses resident in Luxembourg (e.g. trading-, industrial-, mining- or craft businesses) as well as the permanent establishments of foreign companies are subject to municipal business tax at a rate of 6.75%.

### *1.3 Withholding tax*

The dividend distributions of Public Limited Companies (PLC., Corp./SA) in Luxembourg are liable to withholding tax at a rate of 15%. In contrast, royalty and interest payments as well as proceeds from liquidation or partial liquidation are not liable to withholding tax in Luxembourg.

## **2. Net wealth tax**

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Public Limited Companies (PLC., Corp./SA) in Luxembourg which have their registered office or place of central management and control in Luxembourg must pay net wealth tax on their total assets, namely assets in and outwith Luxembourg. However, for Public Limited Companies (PLC., Corp./SA) not resident in Luxembourg, only their assets in Luxembourg will be liable to the said tax. The annual rate of net wealth tax on taxable assets is 0.5%.

## III. Effective structure of a Public Limited Company (PLC., Corp./SA)

In Luxembourg, the legal form of the Public Limited Company (PLC., Corp./SA) is often used by large companies. Notwithstanding this, it also represents an option for small and medium-sized companies. It offers the advantage of issuing shares in the form of easily transferable bearer shares. In practice in Luxembourg, the Public Limited Company (PLC., Corp./SA) is often used for business forms such as the SOPARFI-Financial Holding Company, the Trading Company, the Private Asset Management Company (SPF) as well as for the Securitisation Vehicle (SPV).

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