

**This coordinated text was drawn up by the CSSF for information purposes only. In case of discrepancies between the French and the English text, the French text shall prevail.**

## **Law of 3 September 1996 concerning the involuntary dispossession of bearer securities, as amended**

**(Mém. A 1996, No. 63)**

- by the law of 13 July 2007 on markets in financial instruments transposing
  - Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Directive 93/22/EEC,
  - Article 52 of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, and amending:
    - the law of 5 April 1993 on the financial sector, as amended;
    - the law of 20 December 2002 concerning undertakings for collective investment, as amended;
    - the law of 12 November 2004 on the fight against money laundering and terrorist financing;
    - the law of 31 May 1999 governing the domiciliation of companies, as amended;
    - the law of 23 December 1998 creating a *commission de surveillance du secteur financier*, as amended;
    - the law of 6 December 1991 on the insurance sector, as amended;
    - the law of 3 September 1996 concerning the involuntary dispossession of bearer shares;
    - the law of 23 December 1998 relating to the monetary status of the *Banque centrale du Luxembourg* (Luxembourg Central Bank);
- and repealing:
  - the law of 23 December 1998 relating to the supervision of securities markets, as amended;
  - the law of 21 June 1984 on futures markets, as amended.

(Mém. A 2007, No. 116)

- by the law of 6 April 2013 on dematerialised securities and amending:
  - the law of 5 April 1993 on the financial sector, as amended;
  - the law of 23 December 1998 establishing a financial sector supervisory commission (“*Commission de surveillance du secteur financier*”), as amended
  - the law of 10 August 1915 on commercial companies, as amended;
  - the law of 3 September 1996 concerning the involuntary dispossession of bearer securities, as amended;
  - the law of 1 August 2001 on the circulation of securities and other fungible instruments, as amended;
  - the law of 20 December 2002 relating to undertakings for collective investment, as amended;
  - the law of 17 December 2010 relating to undertakings for collective investment;
  - the law of 13 February 2007 relating to specialised investment funds, as amended;
  - the law of 22 March 2004 on securitisation, as amended

(Mém. A 2013, No. 71)

### **Article 1. Scope**

(1) Any person who, in whatever circumstances or in whatever place, has been involuntarily deprived of a Luxembourg or foreign bearer security representing title rights, claims or securities, other than money symbols, may qualify for the provisions of this law by placing a stop pursuant to Article 3.

(2) For the purposes of this law, the concept of “security” is extended so that the law also applies in case of involuntary dispossession of bearer coupon sheets and stripped bearer coupons.

(3) This law shall not apply to the securities whose dispossession is governed by specific, even prior, provisions.

(4) This law shall affect neither the right of claim belonging to the dispossessed holder pursuant to Article 2279 of the Civil Code, nor the right of redemption belonging to the possessor of good faith pursuant to Article 2280 of the Civil Code. The absence of a stop on a security at the time of acquisition shall be nevertheless equivalent to the provisions of Article 2280 of the Civil Code. Similarly in the event that the current possessor of the lost security has acquired the same in good faith for the purpose of mortgage, the dispossessed holder may be returned the security only by refunding the mortgagee the value of the mortgaged security as assessed at the time of return.

## **Article 2. Registering institution**

The designation of the institution registering the stops on bearer securities, as defined herein, its operation and supervision, the fees to be charged and the publication procedures laid down in Article 3 shall be made pursuant to a grand-ducal regulation.

## **Article 3. Placing and publication of a stop**

(1) In order to qualify for the provisions laid down herein, the dispossessed holder shall notify the registering institution of a stop by an officer's writ, by registered letter, or by a declaration made directly at the registering institution.

(2) The stop application shall specify:

“a) on a compulsory basis, the number, nature, serial numbers by ascending order, issuer's name, and, where applicable, the name and address of the main paying agent in Luxembourg as well as the nominal value, series and the final maturity date of the lost securities;”<sup>1</sup>

b) on a compulsory basis, for the applicant:

- where the applicant is a natural person, his surname, firstnames, date of birth;
- where the applicant is a legal person, his name and registered office;
- the correct address of his domicile or, if he is not a resident, the correct address of the domicile elected in Luxembourg.

c) if and when possible, the period, place and method of acquisition of the lost securities; the period and circumstances of the dispossession; the period when and place where the applicant cashed in the latest interests or dividends; the indication of the coupons still attached to the securities.

(3) The stop shall be publicized by the registering institution at the latest on the first business day of the said institution following the placing of the stop. The publication shall be effected by display on the premises of the registering institution. It shall specify the date of and reason for the stop, and the information communicated pursuant to paragraph (2), item a) of this Article. The registering institution shall inform the issuer of the security and the institution acting as financial agent of the security in Luxembourg, on the first business day following the placing of the stop in question by forwarding to them a copy of the stop application. At the end of each half-year, the registering institution shall publicize in an appropriate manner a list of the stopped securities pursuant to this law.

(4) No later than the day of publication by display, the stop shall be recorded by the registering institution in a computerized database containing all the stops placed pursuant to this law. Access to the database shall be permitted to any interested party, subject to a fee determined by a grand-ducal regulation.

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<sup>1</sup> law of 13 July 2007

(5) Each stop shall be placed subject to the payment to the registering institution of a fee to be paid by the applicant pursuant to conditions and a fee schedule approved by a grand-ducal regulation.

#### **Article 4. Effects of a stop**

(1) The following effects shall arise from the first day following the publication by display of the stop:

- a) nullity towards the applicant of any trade in the security;
- b) non-opposability vis-à-vis the applicant of any payment made in respect of the security by the issuer of the financial agents of the security, such as payments of capital or interests and dividends which have fallen or will fall due, payments in kind or other payments;
- c) suspension of the time limit in respect of any payment to the benefit of the applicant.

(2) “a) The publication of a stop after

- i) the registration of a security in a securities account; or
- ii) the sale of the security by the issuer or cancellation of the security in accordance with the law on dematerialised securities shall have no effect.

b) The liquidation body, the central account keeper or the account keeper or, as the case may be, the issuer may request the registering institution to lift such a stop by confirming in writing the date of the occurrence of one of the events mentioned in point a) above. The ex officio lifting shall be notified to the applicant and published by the registering institution in a manner similar to that prescribed for the termination of the stop, as specified in Article 6(3).

c) The registering institution may thereafter accept no stop on the same security, which would be based on facts prior to one of the events mentioned in point a) above.<sup>2</sup>

(3) Any payment in respect of the security which would have been made erroneously in spite of an existing stop may be deemed undue, and the security in question shall be retained as prescribed in the subsequent Article.

#### **Article 5. Obligations of the issuer and the professionals of the financial sector**

(1) Where they perform an operation on a security with a third part, the credit institutions and other professionals of the financial sector shall register:

- a) the numbers, if any, and the main designations of the securities;
- b) the day and type of operation;
- c) the names, domiciles and professional activities of the persons with whom they trade.

If and when possible, and with all reasonable and due care, skill and forethought, they shall also check the identity of the said persons, on pain of damages which might be claimed by the third parties harmed by their negligence.

(2) The issuer and any professional of the financial sector who is communicated a security subject to a stop of which he is informed, or who becomes aware that he holds a stopped security, shall retain the said security, if necessary against a receipt to the bearer, and promptly inform thereof the registering institution which shall promptly notify the applicant thereof.

(3) Where a professional of the financial sector is handed over a security for the purpose of being registered on a current account of fungible deposit, he shall make a specific check to

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<sup>2</sup> law of 6 April 2013

ensure that the security in question is not subject to a valid stop, and should that be the case, he shall proceed as stipulated in paragraph (2) above, and therefore may not accept the deposit of the security without committing his own liability such as prescribed in ordinary law.

#### **Article 6. Termination of a stop**

(1) The applicant shall terminate a stop, in particular when he retrieves a security on which he has placed a stop, in one of the manners prescribed for notifying the stop to the registering institution.

(2) Any third person holding a stopped security may apply to the *président du tribunal d'arrondissement de Luxembourg* [president of the district court of Luxembourg] to terminate the stop. The *président du tribunal* [president of the court] shall examine the circumstances thereof; he shall order the intervention of the applicant, and, should he deem it appropriate, that of the issuer. In this case, he shall act as in a summary procedure. He shall order the termination of the stop unless the applicant files a claim to the security during the month following the start of his intervention. The party in favour of which the termination of the stop has been ordered or to which the security has been granted following a claim shall inform the registering institution thereof in writing so that the registration of the stop can be terminated.

(3) Any termination of a stop shall be publicized by the registering institution and notified to the issuer and to the financial agent of the security in Luxembourg, in a manner similar to that used for the notification of the termination.

The effects of the stop shall cease at the time of publication of the termination.

#### **Article 7. Forfeiture**

(1) In the event that no application for termination of a stop is effected, a security appearing on the list of stopped securities, without interruption and for four calendar years, as from 1 January following the first publication by display, shall be automatically forfeited and become of no value.

(2) Each year, on 1 December, the registering institution shall publish a full list of the securities becoming of no value at the end of the month, in a manner and under conditions similar to those governing the publication of the stop notifications. Each year, on 10 January at the latest, the registering institution shall similarly publish a full list of the securities having become of no value on 31 December of the previous year.

(3) At the end of each half-year, the registering institution shall publish a list of the forfeited securities under these provisions, in a manner and under conditions similar to those governing the list of the stopped securities. Each security shall remain on the list for ten years and the coupons shall remain for five years.

#### **Article 8. Effects of the forfeiture**

“(1) The forfeiture of the security shall imply that the applicant becomes entitled to exercise the rights attached to the security upon issuance of a new security in its favour or registration of the security in its securities accounts and to cash in any arrears or capital which have fallen due.”<sup>3</sup>

“(2) Without prejudice to the application of Article 9(3) in the event that the security matures prior to being forfeited, the sums paid in respect of the security shall be deposited with the *caisse de consignation* [deposit and consignment office] until the termination of the stop or until the expiry of the time of laps of the security.”<sup>4</sup>

#### **Article 9. Issue of a new security**

(1) The forfeiture of a security shall imply that the applicant may require the issuer to deliver him a new security replacing the lost security, provided with a new number or with the former

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<sup>3</sup> law of 6 April 2013

<sup>4</sup> law of 13 July 2007

number followed by a specific mark, and entitling to the same rights which the lost security provided. The issuer may charge security replacement expenses to the applicant.

(2) A third holder presenting the forfeited original security after the regular delivery of the new security to the applicant may act against the applicant provided no right existed to file the stop or the application for the issue of a new security.

(3) "Notwithstanding the above-mentioned Article 8(2) and even prior to the forfeiture of a stopped security, the issuer may, on his own responsibility, deliver a security in materialised or, as the case may be, dematerialised form which is similar to the stopped security or pay to the applicant any interest, dividend, capital or other distribution of the stopped security."<sup>5</sup> Such payments can be made subject to the deposit of a valuable or personal guarantee, and the applicant may be requested to support any expense in connection with the replacement of the security.

#### **Article 10. Partly destroyed securities**

The delivery of a new security subject to the reimbursement of expenses may be required if the presented original security which remains recognizable in its essential parts is partly destroyed, torn off and stained to the extent that it may not be traded or transferred.

*(Law 6 April 2013)*

"A new security may only be delivered in the form of a registration of a dematerialised security in a securities account of the security owner if, when delivered, the security in question may circulate in dematerialised form."

#### **Article 11. Expenses of the issuer**

The court and other expenses supported by the issuer under this law shall be charged to the applicant and may be recovered unless they have been caused by the former on a groundless claim.

#### **Article 12. Criminal provision**

Any person making a fraudulent stop or obtaining either a payment or a new security in respect of such a stop shall be punished by imprisonment for a period of one month to five years and a fine of 10,001 to 300,000 francs.

#### **Article 13. Repealing provisions**

(1) The law of 16 May 1891 concerning the loss of bearer securities is repealed.

(2) The grand-ducal regulation of 18 December 1981 concerning the security, the circulation and the loss of securities, such as amended later on, is repealed.

(3) Article 7 of the grand-ducal regulation of 17 February 1971 concerning the circulation of securities, is repealed.

#### **Article 14. Transitional provisions**

(1) The stops on any security referred to in Article 1 of this law, pursuant to the procedures laid down in the law of 16 May 1891 concerning the loss of bearer securities or in the convention of 28 May 1970 relating to stops on bearer securities in international circulation, and made prior to this law, shall be deemed to be fully valid. For the future, they shall be governed by the provisions of this law. The guarantees provided by the applicant on the basis of the former legislation shall be released at the time of forfeiture of the security, unless the applicant releases such guarantees earlier by reimbursing the payments obtained under the said guarantees. The forfeiture of a security stopped under the former legislation shall under no circumstances take place until the first day of the month of January following the entry into force of this law.

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<sup>5</sup> law of 6 April 2013

(2) For the purposes of applying the preceding paragraph, any useful information shall be automatically communicated to the registering institution by the department responsible to date, or, upon request, by the issuers of the stopped securities or by the institutions acting as the financial agents of the securities. The department in question shall within six months communicate to the registering institution all and any useful information on the existing stops.

(3) This law shall come into force on the first day of the second month following its publication.