

Circular RCSL 11/2

Subject: Documents required for filing with any registration requests for Luxembourg-based branches of foreign companies

Notes issued by the Luxembourg Trade and Companies Register ("RCS"):

- o Are of a general nature and are not aimed at any particular situation applicable to any individual natural person or legal entity ;
 - o Are of documentary nature and for information only ;
 - o Are solely aimed at answering a number of questions raised by "RCS" users ;
 - o Are of no legal value, and do not involve the liability of the "RCS" ;
 - o Are not necessarily up-to-date, exhaustive or comprehensive ;
 - o Are not to be used as a substitute for legal or professional advice ;
 - o Only reflect the opinion of the "RCS" on a number of questions which remain subject to any interpretation by Courts and Tribunals.
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The present circular aims at specifying the necessary documents which must be attached to any **registration** requisition for Luxembourg-based branches of foreign companies that are not subject to any specific regime. This circular is not aimed at mandatory registration and publication during the activity period, such as the filing of accounting documents (for any further information please refer to "**Circular RCSL 11/1**") or any legal proceedings which the foreign company may be subjected to.

All branches of foreign companies with no commercial form or any similar form are not subject to any publication requirements, with regards to either the branch itself, or the foreign company it relates to.

Thus, the abovementioned filing and publication requirements only apply to the registration of Luxembourg-based branches of any **foreign commercial company**.

1. Branch of a commercial company, or of a company established as a commercial company and subject to the 68/151/EEC directive, or with a similar legal form to companies subject to the 68/151/EEC directive :

In such a case, it must be established whether the branch belongs to a company governed by the law of another Member State of the European Community.

1.1 Branch of a company governed by the law of another Member State of the European Community

Article 160-2 of the amended law of 10th August 1915 concerning commercial companies, hereafter referred to as "LSC", is applicable.

The branch is required to publish a certain amount of information on itself as well as on the company governed by foreign law which it is bound to, in accordance with the conditions set out in article 9 "LSC". Thus, this information will be filed with the "RCS" and published within the Memorial, Official Journal of Companies and Associations.

This publication must contain the following information:

- Branch address;
- Mention of the branch activity;
- The register in which the company file is open as per article 3 of the 68/151/EEC directive as well as the company registration number on the register;
- The company's corporate name and legal form;
- The branch's corporate name in case it does not match the company corporate name;
- Appointing , termination, and identity of any authorized company representatives with regards to third parties and legal proceedings, acting as an administrative statutory body legally , or any members thereof, in compliance with advertising towards this company as per article 2, paragraph 1, point d of the 68/151/EEC directive;
- Appointing, termination, and identity of any authorized company representatives with regards to third parties and legal proceedings, acting as permanent company representatives for the branch, specifying the extent of their authority.

1.2. Branch of a company under the law of non-European Community states

Article 160-6 "LSC" applies.

The branch is required to publish the following information, as per the conditions set out by article 9 of the "LSC":

- Branch address;
- An indication of the branch's activity;
- The law of the State relevant to the company;
- The register in which the company is recorded as well as its registration number on this register, if applicable;

- The form, head offices, and purpose of the company as well as its capital (which must be submitted at least once per year) in case this information is not reflected on the constituent act and company statutes;
- The company corporate name;
- The branch corporate name, in case it does not match the company corporate name;
- Appointing, termination, and identity of any authorized company representatives with regards to third parties and legal proceedings, legally acting as an administrative statutory body, or any members thereof, in compliance with advertising towards this company as per article 2, paragraph 1, point d of the 68/151/EEC directive, specifying the extent of their authority, and whether it is exercised individually or collectively;
- Appointing, termination, and identity of any authorized company representatives with regards to third parties and legal proceedings, acting as permanent company representatives for the branch, specifying the extent of their authority, and whether it is exercised individually or collectively.

Furthermore, any company under foreign law must file its memorandum and articles of association as well as its statutory information, along with any amendments to these documents and all statutory updates, with the "RCS", for publication within Memorial C, Official Journal of Companies and Associations, in case these documents are subject to separate deeds.

2. Branch of a commercial company, or of a company established as a commercial company with a legal form which cannot be assimilated to those under the 68/151/EEC directive:

In such a case, it is not required to differentiate whether the company is subject to laws of any European Member States or not.

Articles regarding the publication of company deeds are applicable in accordance to article 160 "LSC". Thus, and as per requirements set out within article 9 "LSC", the memoranda and articles of association as well as any amendments must thereof be filed with the "RCS" and are subject to integral publication within the Memorial, Official Journal of Companies and Associations.

No information on the branch itself however is to be published.

On behalf of the Manager of the Luxembourg Trade and Companies Register,

(s.)Yves Gonner
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