

ANNEX 3 to Convening Notice (Annual General Meeting 2017)

Allen & Overy
société en commandite simple, inscrite au barreau de Luxembourg

MEMORANDUM

To Stabilus S.A.

From Allen & Overy, société en commandite simple

Our ref. /0111557-0000003 LU:11144526.2

Date 6 December 2016

Concerns **Proposed amendments to the articles of association of Stabilus S.A.**

The purpose of this memorandum is to provide you with a short description and explanation of the proposed amendments to the articles of association (the **Articles**) of Stabilus S.A. (the **Company**), which are proposed to be implemented at the annual general shareholders' meeting (**AGM**) of the Company on 15 February 2017.

These amendments are recommended in view of certain legislative changes in Luxembourg, in particular in relation with the amendment of the Luxembourg companies law by a law dated 15 August 2016 (the **Company Law Reform**) and the law dated 28 July 2014 on the mandatory deposit and immobilisation of bearer shares and units (the **Deposit Law**).

1. **Transfer of the registered seat (Article 2.1)**

Proposed amendment

2.1 Place and transfer of the registered office

The registered office of the Company is established in Luxembourg. It may be transferred within such municipality [or to any other place in the Grand Duchy of Luxembourg](#) by a resolution of the management board of the Company (the **Management Board**). ~~The registered office may also be transferred to any other place in the Grand Duchy of Luxembourg by a resolution of the general meeting of the shareholders of the Company (the General Meeting) adopted in the manner provided for in Article 10 with respect to the amendments of the Articles, who will then be authorised to amend the Articles to reflect the completion of the transfer.~~

Explanation

Prior to the Company Law Reform, a transfer of the registered office outside of the city of Luxembourg had to be approved by the general shareholders' meeting.

Luxembourg law now allows to transfer the registered office of the Company within the Grand Duchy of Luxembourg (and not only the municipality of the city of Luxembourg) by a simple decision of the management board without prior shareholder approval.

We recommend to reflect this new flexibility in the Articles, provided, for the avoidance of doubt, that any transfer outside of the Grand Duchy of Luxembourg would still be subject to prior shareholder approval.

Please note that as a consequence of this amendment, article 3.2 also requires an amendment to include the definition of „General Meeting“ as follows:

The Company may be dissolved, at any time, by a resolution of the [general meeting of shareholders \(the General Meeting\)](#) adopted in the manner provided for in Article 10 with respect to the amendments of the Articles.

2. Conversion into dematerialised shares (Article 6.2)

Proposed amendment

6.1 Form of the shares

~~The shares of the Company are in registered form or are bearer shares, at the option of the shareholder. They shall be in registered form until they are fully paid-up.~~

~~6.2 Share register and share certificates~~

~~The terms of this Articles 6.2 are applicable to shares in registered form only.~~

The shares of the Company are dematerialised shares (**Dematerialised Shares**) in accordance with the Luxembourg law on dematerialised shares dated 6 April 2013 (the **Dematerialisation Law**). All future shares to be issued by the Company shall be in dematerialised form and the optional conversion of shares to any other form by the holder of such shares is prohibited.

All dematerialised shares shall be registered via the single settlement organisation (*organisme de liquidation*) appointed by the Company, as it may be changed from time to time (the **Settlement Organisation**). The dematerialised shares are only represented, and the ownership of such shares is only established by a record in the name of the shareholder in the securities account. The **Settlement Organisation** may issue or request the Company to issue certificates relating to dematerialised shares for the purpose of international circulation of securities.

The decision to proceed with the mandatory conversion of all existing shares of the Company, represented at such time by a global bearer share, was taken at the annual general shareholders' meeting of the Company dated 15 February 2017 (the **2017 AGM**).

In accordance with article 9(3) of the Dematerialisation Law, all shares within the centralized management system operated by Clearstream Frankfurt that are already treated as *de facto* dematerialized financial instruments shall automatically be converted into Dematerialised Shares in accordance with the Dematerialisation Law three months after the publication of the 2017 AGM in the RESA (*Recueil électronique des sociétés et associations*) (such three months period, the **Transitory Period**). The Company may exercise any rights under article 17 of the Dematerialisation Law for the purpose of identifying the holders of Dematerialised Shares.

~~A share register will be kept at the registered office, where it will be available for inspection by any shareholder. Such register shall set forth the name of each shareholder, its residence or elected domicile, the number of shares held by it, the nominal value or accounting par value paid in on each such share, the issuance of shares, the transfer of shares and the dates of such issuance and transfers. The ownership of the shares will be established by the entry in this register.~~

~~Certificates of these entries may be issued to the shareholders and such certificates, if any, will be~~

~~signed by the chairman of the Management Board or by any other two members of the Management Board.~~

(...)

~~6.4~~ ~~6.5~~ Deposit

Notwithstanding the foregoing in this Article 6 and for the duration of the Transitory Period, where

(...)

7. TRANSFER OF SHARES

Following the effective conversion of all Company shares into Dematerialised Shares after the Transitory Period, all shares are freely transferable through book entry transfers (*virement de compte à compte*) in accordance with the legal requirements of the Dematerialisation Law.

(old articles 7.1, 7.2 and 7.3 to be deleted)

Explanation

Currently the share capital of the Company is represented by a single global bearer share, which is deposited in Frankfurt, Germany, with Clearstream. This global bearer share is represented in the Clearstream system through dematerialised certificates registered in the security accounts of the shareholders.

This system of a *de facto* dematerialisation has been relied upon for many years in Luxembourg to facilitate listings on stock markets. However, there exists no dedicated legal framework for this system, which is merely based on general legal principles.

Since the entry into force of the Deposit Law, the long term sustainability of the *de facto* dematerialisation has been questioned. Indeed the Deposit Law provides that all Luxembourg law governed bearer shares have to be deposited with an accredited depositary in Luxembourg and the non-compliance with these rules leads to a neutralisation of the rights attached to the relevant bearer shares.

Based on a literal interpretation of the Deposit Law, this would require the Company to deposit the global bearer share in Luxembourg, which is however not conceivable in practice to the extent Clearstream in view of internal policies requires the global bearer share to remain in Frankfurt.

Although the current practical risk is rather academic and the share structure of the Company remains in our view valid to the extent the Deposit Law should not be applicable to a „global“ bearer share, we advise to proceed with this „technical“ change to convert the current global bearer share into dematerialised shares in accordance with the Luxembourg law dated 6 April 2013 to ensure that the Company and its shareholders benefit from the most up-to-date and secure legal framework available.

On a practical level, this will not require any positive action by the shareholders of the Company (other than approving the relevant resolution), but going forward the Company shares would rely on Lux CSD (www.luxcsd.com) in Luxembourg to act as central settlement organisation.

3. Date of the annual general shareholders' meeting (article 9)

Proposed amendment

9. ANNUAL GENERAL MEETING OF THE SHAREHOLDERS - OTHER MEETINGS

The annual General Meeting shall be held, in accordance with Luxembourg law, in Luxembourg at the address of the registered office of the Company or at such other place within the municipality of the registered office, and at such time as specified in the convening notice of the meeting, ~~on the third Wednesday in February of each year at 10 am Luxembourg time. If such a day is not a business day in Luxembourg, the annual General Meeting shall be held on the following business day, at the same hour.~~

Explanation

Pursuant to the Company Law Reform there is not longer an obligation to determine the date of the AGM in the Articles. As such, the date of the AGM can be changed on a yearly basis and shall be determined in the convening notice.

We recommend reflecting this new flexibility in the Articles.

4. Conflict of interest (Article 24.1)

Proposed amendment

4.1 Procedure regarding a conflict of interest

In the event that a member of the Management Board or a member of the Supervisory Board, as the case may be, has ~~an~~, directly or indirectly, a financial interest opposite to the interest of the Company in any transaction of the Company that is submitted to the approval of the Management Board or the Supervisory Board, as the case may be, such member of the Management Board or the Supervisory Board shall make known to the Management Board or the Supervisory Board, as the case may be, such opposite interest at that meeting and shall cause a record of his statement to be included in the minutes of the meeting. The member of the Management Board or the member of the Supervisory Board may not take part in the deliberations relating to that transaction and may not vote on the resolutions relating to that transaction. The transaction, and the member's interest therein, shall be reported to the next following General Meeting.

Explanation

Following the Company Law Reform, the criteria for a conflict of interest for a corporate body have been adjusted. Going forward a conflict of interest requires a „direct or indirect financial“ conflict.

We recommend to update the Articles with this new legal framework.