

COVID-19: SPECIFICS MEASURES FOR LUXEMBOURG COMPANIES UPDATE AS AT 29 MAY 2020

In adopting the regulation of 20 March 2020, following the declaration of a state of emergency on 18 March 2020, specific measures have been introduced temporarily changing the existing legislation.

The adoption of the government regulation was justified by the emergency. The law of 22 May 2020 (the “Law”) confirmed a few of the regulatory measures, but also amended and completed them. The Law itself indicates that it shall come into force as from its publication in the Luxembourg official Gazette, on 29 May 2020, its provisions being henceforth fully applicable.

The Law states that it is applicable to legal persons listed in article 8 of the Luxembourg Commercial Code (and to public establishments of the State) i.e.:

- Natural persons having a commercial activity;
- Commercial companies having a legal personality:
 - Joint-stock companies (SA);
 - Partnerships limited by shares (SCA);
 - Private limited liability companies (including under a simplified regime);
 - Simplified companies limited by shares;
 - Partnerships;
 - European companies;
 - Cooperative companies;
 - General partnerships (SNC).
- Special partnerships;
- Economic interest groups and European economic interest groups.

I. Date of annual general shareholders meeting

Date of annual general shareholders meeting
The Law provides for a better consistency between the extended delays for filing and publication of the annual accounts and the delay for holding the annual general meeting of shareholders.

Companies are henceforth authorized to hold their annual general meeting up to nine months from the date of the end of their financial year. In order to clarify, a company that closed its financial year on 31 December 2019 may be able to hold its annual general meeting by 30 September 2020, at the latest, and to file its annual accounts by 31 October 2020.

Companies may benefit from the extended delays if their financial year closed before, or during the state of emergency, and providing that the delay for filing and publication of their annual accounts had not expired as at 18 March 2020.

II. Measures taken regarding the filing and publication of the annual accounts and related documents

By way of derogation to the provisions of the law of 19 December 2002 on the Trade and Companies Register and the annual accounting of companies, article 1 of the Law extends the following delays by three months:

- Delay of filing of the statutory annual accounts with the Luxembourg Trade and Companies Register;

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- Delay of publication of the statutory annual accounts with the Recueil Electronique des Sociétés et Associations (“RESA”);
- Delay of publication of the report on payments processed in favor of governments with the RESA.

Article 2 of the Law extends the above provisions to consolidated accounts and related documents, which therefore benefit from an additional delay of three months for filing and publication. Please note that the previous delay of 4 months set-up by the Luxembourg Business Register is no longer applicable.

Article 4 of the Law provides for an adaptation of the criminal penalties foreseen by the law of 10 August 1915 on commercial companies as amended (“LSC”) with the abovementioned delays. Indeed, when the annual accounts and related documents are not filed within the usual legal delays, the representatives of the company will not incur the criminal penalties foreseen by the LSC (Art. 1500-2, 2°), this of course, within the limit of the three month extended delay.

As well as for the holding of annual general meetings, these provisions apply to companies that had a financial year that closed before, or during the state of crisis and for which the filing and publication delay was still running as at 18 March 2020.

The provisions of the Grand Ducal regulation of 20 March 2020 which are not amended by the Law remain applicable by virtue of said regulation as long as the state of crisis continues (Cf. BDO Memo of March 2020). A deed of law number 7566 (not yet adopted) provides for an extension of such measures for general meetings convened according to the law. An update will be provided as soon as this deed of law has been adopted.

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