

ATOZ ALERT

COVID-19: The end of Luxembourg state of crisis - Corporate implications on corporate decisions

9 June 2020

On 29 May 2020, a new draft law n°7605 has been presented to Parliament which will end the state of crisis as soon as it has become law and been published in the Memorial. The draft law n°7605 aims to repeal the law of 24 March 2020 which extended until 24 June 2020 the state of crisis declared by the Grand Ducal Regulation of 18 March 2020.

Effects of the draft law n°7605

Should the law be passed and published prior to 24 June 2020, the state of crisis will end sooner than expected and the various Grand Ducal Regulations taken on the basis of Article 32, paragraph 4 of the Luxembourg Constitution and introducing emergency measures will lose their effects as from that date.

Nevertheless, most of the measures taken by Grand-Ducal Regulation on the basis of Article 32, paragraph 4 of the Luxembourg Constitution have been incorporated into various sectorial laws.

In addition, many of the COVID-19 measures have been introduced by law : this is the case of the Law of 22 May 2020 extending the deadlines for holding general meeting, filings and publication of annuals accounts¹, the Law of 12 May 2020 extending certain time limits provided for in the sectoral laws of the financial sector² and the Law of 12 May 2020 providing additional tax procedure relief³.

Therefore, as far as these measures are concerned, they will remain valid in accordance with the respective law provisions.

¹ [Loi du 22 mai 2020 portant prorogation des délais de dépôt et de publication des comptes annuels, des comptes consolidés et des rapports y afférents durant l'état de crise.](#)

² [Loi du 12 mai 2020 portant prorogation de certains délais prévus dans les lois sectorielles du secteur financier durant l'état de crise.](#)

³ [Loi du 12 mai 2020 portant adaptation de certains délais en matière fiscale, financière et budgétaire dans le contexte de l'état de crise.](#)

Corporate implications of the draft law n°7605

Some other measures taken during the state of crisis period have only been taken by Grand-Ducal Regulation on the basis of Article 32, paragraph 4 of the Luxembourg Constitution and will thus no longer apply as from the publication of the law repealing the state of crisis. This is notably the case of the Grand Ducal Regulation of 20 March 2020 on the holding of shareholder and board meetings⁴, authorizing companies and other legal entities to adopt resolutions without physical meeting.

However, another draft law (the draft law n°7566⁵) which is currently going through the legislative process aims precisely to ensure legal certainty by extending the effect of the Grand Ducal Regulation of 20 March 2020 regarding the means used for the holding of shareholders' and board's meetings after the end of the state of crisis.

According to the last amendments made by the *Commission de la Justice*, the draft law n°7566 will apply to any entity which financial year ended at the latest on the end of the state of crisis (currently the 24 June 2020) and during a 9-month period as from the end of such financial year.

In practice, according to the draft law n°7566, board and shareholders' meeting of an entity having a financial year ending on 31 December 2019 can be held until 30 September 2020 without requiring the physical presence of its board members and/or shareholders, whether these meetings are related to the annual accounts approval process or not.

However, an entity which financial year is supposed to end after the end of the state of crisis (*e.g.* 30 June 2020) does not fall within the scope of draft law n°7566 so that any of its board or shareholders' meetings will need to be held in accordance with the existing provisions of the Law of 10 August 1915.

Key take-away

The end of the state of crisis should therefore have no major impact in practice on the way corporate decisions can currently be taken in Luxembourg under the Grand Ducal Regulation of 20 March 2020.

Nonetheless, attention should be paid when preparing corporate approval documents to ensure that:

- no reference will be made to the Grand Ducal Regulation of 20 March 2020 anymore once the draft law n°7605 has been voted and published; and
- depending on whether the entity falls under the scope of draft law n°7566, a reference is made (i) either to the law resulting from draft law n°7566, once published, or (ii) to the usual articles of the law of 10 August 1915 on commercial companies, as amended.

In addition, to avoid any shift of the place of effective management of a company outside Luxembourg from a tax point of view, conference calls or visio conferences should in any situation still ideally be initiated from Luxembourg⁶.

⁴ [Règlement grand-ducal du 20 mars 2020 portant introduction de mesures concernant la tenue de réunions dans les sociétés et dans les autres personnes morales](#)

⁵ [Projet de loi portant prorogation des mesures concernant la tenue des réunions dans les sociétés et dans les autres personnes morales](#)

⁶ Please refer to section "Good Governance" in our article "COVID-19 : New measures for Luxembourg investments funds" published in the latest Atoz Insights for further guidance.

Do you have further questions?



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