

Covid-19 coronavirus – End of the state of crisis in Luxembourg

25 June 2020

On 24 June 2020 at midnight, the state of crisis in Luxembourg finally came to an end. As a result, all grand ducal and ministerial regulations taken under the special powers conferred on the Luxembourg government under the state of crisis have now ceased their effect. However, the Covid-19 pandemic is not yet over and extraordinary measures are still required. The Luxembourg parliament has recently adopted laws to extend the effect of some of the measures previously laid down by grand ducal regulations. Here is an overview of the situation in relation to corporate law, financial support measures and litigation matters, including bankruptcy proceedings.

If you would like to discuss any of the issues raised in this paper in more detail, please reach out to your usual Allen & Overy Luxembourg contact.

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Corporate

Extension of the applicability of the measures to facilitate the holding of meetings in commercial companies and other legal entities

As mentioned in [our eAlert of 28 April 2020](#), bill n°7566 was introduced before the Luxembourg Parliament on 21 April 2020 to extend the applicability of the provisions of the grand ducal regulation of 20 March 2020 (the **Emergency Regulation**) after the end of the state of crisis. As a reminder, the Emergency Regulation allowed Luxembourg companies to move to written resolutions or videoconferencing for all board and shareholder meetings during the state of crisis, even where not expressly provided in the articles of association of such companies. For further details on the rules applicable pursuant to the Emergency Regulation, please refer to [our previous eAlert](#).

The legislative process has now come to an end and [the law of 20 June 2020](#) (the **Law**) was published in the Official Gazette on 25 June 2020. The provisions of this Law entered into force on the same day.

The Law clarifies that notwithstanding the expiry of the Emergency Regulation on 24 June, the provisions of the Emergency Regulation, as amended by the Law, shall continue to apply to the holding of board or shareholder meetings of Luxembourg companies during a nine months period as from the end of their financial year (i.e., 30 September 2020 for companies whose financial year ended on 31 December 2019).

The provisions of the Law are also applicable to the meetings of members or shareholders as well as to meetings of the legal or statutory management bodies of the following Luxembourg legal entities, also for a period of nine months as from the end of their financial year:

- non-profit associations (ASBLs) and foundations,
- agricultural associations,
- mutual insurance companies,
- economic interest groups,
- European economic interest groups,
- the public establishment named "*Fonds du logement*",
- co-ownership syndicates (*syndicats de copropriété*),
- the *Institut des réviseurs d'entreprises* (IRE),
- the *Ordre des experts comptables* (OEC).

In addition, the Law extends the deadlines for the holding of the annual general meeting of the following legal entities:

- non-profit associations (ASBLs) and foundations: the deadline for holding the general meeting to approve budgets and accounts is extended to 30 September 2020;
- syndicates of co-ownership (*syndicats de copropriété*): the annual general meeting may be held on a date that is no later than 30 September 2020 even if the by-laws provide for an earlier date;
- the public establishment named "*Fonds du Logement*": the deadlines provided for in articles 25, paragraph 3 and 27 of the law of 24 April 2017 are extended by three months;
- the *Ordre des experts comptables* (OEC): the general meeting of the year 2020 can be held no later than 30 September 2020;
- the *Institut des réviseurs d'entreprises* (IRE): the general meeting of the year 2020 can be held no later than 30 September 2020.

Financial support to Luxembourg enterprises

All emergency allowances and aid schemes created by grand ducal regulations since 18 March 2020 are no longer available. Applications for those allowances and aid schemes indeed were to be submitted during the state of crisis.

The following allowances and aid schemes that have been sanctioned by a dedicated law will remain in place.

Aid scheme in case of temporary financial difficulty due to an exceptional event as set up by the law of 3 April 2020

On 3 April 2020, a [law on the establishment of an aid scheme for enterprises in temporary financial difficulty](#) was adopted.

Aim

The aim of the law is to create an aid scheme to supplement existing aid instruments to support, upon application:

- commercial, craft or industrial enterprises holding a valid Business licence; and
- natural and legal persons exercising on a principal and independent basis a liberal profession within the meaning of article 91 (1) point 1 of the amended act of 4 December 1967 on income tax,

(together the **Aid Beneficiaries**) who find themselves in temporary financial difficulty as a result of the repercussions of an exceptional event.

Details

The financial support takes the form of a refundable advance.

The granting of the aid is subject to the following four conditions:

- (i) the event must have been recognised, by a grand ducal regulation, as having a prejudicial impact on the economic activity of the Aid Beneficiaries during a given period. A grand ducal regulation of 3 April 2020 was published on the same day to list the economic activities on which the Covid-19 pandemic has a prejudicial impact from 15 March until 15 May 2020. This grand ducal regulation was subsequently amended by a grand ducal regulation of 29 May 2020, which extends the above period from 15 March 2020 to 15 September 2020 (the **Period**);
- (ii) the Aid Beneficiary is experiencing temporary financial difficulties;
- (iii) the Aid Beneficiary was carrying out its economic activity before the event; and
- (iv) there is a casual link between these difficulties and the event in question.

The aid will be allocated upon written application (to be submitted to the competent Ministry by 15 August 2020 at the latest).

Eligible costs under the new aid scheme are limited to staff costs and rent charges (within the limit of EUR 10,000 per month for rent charges) payable during the Period. Income from the exercise of a professional activity carried out as a self-employed person is also eligible, provided that the person concerned is affiliated as such in accordance with the provisions of the Social Security Code (with a cap at an amount equivalent to 2.5 times the minimum social wage, per person concerned).

The aid will amount to up to 50% of the eligible costs within the limit EUR 500,000 per enterprise (or, if an enterprise is part of a group, per group).

The aid will take the form of a refundable advance to be granted before 1 October 2020. Repayment of the advance will take place according to a negotiated repayment plan (including applicable interest rate) but shall only start at the earliest 12 months after its disbursement (unless otherwise requested by the Aid Beneficiary).

State Guarantee Scheme as set up by the law of 18 April 2020

On 18 April 2020, a [law aiming at setting up a guarantee scheme](#) for the Luxembourg economy in the context of the Covid-19 pandemic was adopted.

Aim

The aim of this law is to set up a guarantee scheme by the Luxembourg State, up to a limit of EUR 2.5 billion, for new loans granted by Luxembourg credit institutions between 18 March and 31 December 2020 to certain eligible beneficiaries to facilitate the granting of loans by credit institutions to support enterprises affected by the consequences of the Covid-19 pandemic.

Details

The following persons are eligible for this guarantee:

- commercial, craft or industrial enterprises holding a valid Business Licence in Luxembourg; and
- natural and legal persons exercising on a principal and independent basis a liberal profession within the meaning of article 91 (1) point 1 of the amended act of 4 December 1967 on income tax.

By contrast, the following persons are out of the scope of the guarantee scheme:

- companies whose main activity consists of the promotion, holding, renting and trading of real estate property;
- companies whose main activity is the holding of interests in other companies; and

- employers who have been convicted on at least two occasions of contravening provisions prohibiting illegal employment or provisions prohibiting the employment of illegally resident third-country nationals during the last four years prior to the judgment of the competent court (exclusion of the guarantee scheme limited, however, to a period of three years from the date of the judgment).

Only loans with a maximum duration of six years will be eligible. As a matter of principle, the maximum amount of loans eligible for the guarantee may represent up to 25% of the turnover of the beneficiary recorded in 2019 (or, if not available, the last recorded year).

The guarantee covers 85% of the amounts due (in principal, interest or otherwise) under the loans.

The State treasury office is in charge of the issuance and management of the relevant guarantees in accordance with the conditions set out in an agreement with the credit institutions involved (a list of participating credit institutions is available). Hence, the guarantee is granted upon application by the relevant credit institution to the State treasury office but against payment of a fee by the beneficiary (the level of such fee depends on the duration of the loan as well as the size of the enterprise, namely, small, medium or large, as defined in the Law).

Where the State treasury office receives notification of several loans granted to the same beneficiary, the State guarantee shall be acquired in the chronological order in which the loans were granted and shall be limited to an aggregate amount that remains below the maximum amount of credits eligible for the guarantee as mentioned above.

The guarantee cannot be cumulated, for the same loan, with other guarantee measures granted by the State.

Aid scheme for projects linked to the fight against the Covid-19 pandemic as set up by the law of 20 June 2020

On 20 June 2020, a [law aiming at replacing the grand ducal regulation of 8 April 2020](#) setting up an aid scheme for projects linked to the fight against the Covid-19 pandemic was adopted.

Aim

The law aims at replacing the grand ducal regulation of 8 April 2020 setting up an aid scheme for projects linked to the fight against the Covid-19 pandemic.

Details

The Ministry of the Economy may grant an aid for research and development projects related to the fight against Covid-19. The amount of the aid, which will be calculated on the basis of eligible costs, as further detailed in the law, may not exceed the following thresholds:

- 100% for basic research projects; and
- 80% for industrial research or experimental development projects.

Such thresholds may be increased for cross-border projects.

The beneficiary must undertake to grant non-exclusive licences under non-discriminatory market conditions to interested third parties in the European Economic Area.

The Ministry of the Economy may also grant an investment aid for the production of products relevant for the fight against Covid-19. The amount of the aid may not exceed 80% of the eligible costs, as further detailed in the law.

The investment project must be completed no later than six months after the aid has been granted, failing which the beneficiary must refund 25% of the aid granted per month of delay. A higher amount may be granted to the beneficiary in case the project is completed within two months after the aid has been granted. Furthermore, a guarantee to cover up to 30% of the losses may be granted in addition to the investment aid upon request from the beneficiary.

The law shall apply only to aid having an incentive effect, that is for projects that started after 31 January 2020 or, for projects started before 1 February 2020, only if the aid accelerates work already in progress or if the scope of the project can be extended. In these cases, only additional costs related to the acceleration efforts or the expansion of the project scope are eligible.

Request for an aid must be submitted at the latest by 15 December 2020. The aids mentioned above take the form of a capital grant, granted upon completion of the relevant project (however, one or more payments on account may be made as and when the investment for which the aid was granted is completed). The aids must be granted no later than 31 December 2020.

The two aids may not be cumulated for the same eligible costs and cannot be cumulated with certain other aids as further detailed in the law.

The following persons cannot benefit from the above aids:

- companies that were in difficulty before 1 January 2020; and
- employers who have been convicted on at least two occasions for contravening the provisions prohibiting illegal employment or the provisions prohibiting the employment of illegally staying third-country nationals, in the last four years prior to the judgment of the competent court.

Certified emergency allowance for self-employed workers as set up by the law of 20 June 2020

On 20 June 2020, a [law was adopted](#) to extend the possibility for self-employed workers to apply for a certified emergency allowance as set up by the grand ducal regulation of 6 May 2020.

Aim

The law aims at replacing the grand ducal regulation of 6 May 2020 creating a certified emergency allowance for self-employed workers and renewing, for a limited period, the certified emergency allowance by way of law. Self-employed workers will accordingly have until 15 July 2020 to apply

for such allowance. Except for the timing of the submission, the requirements under the bill of law remain unchanged compared to those under the grand ducal regulation.

Details

The allowance takes the form of a one-off lump-sum capital grant in an amount which depends on the contributory income bracket in which the self-employed worker falls. The relevant amounts are set at EUR 3,000, EUR 3,500 and EUR 4,000. Self-employed workers are persons having the following main occupation:

- exercising on own account a professional activity within the competence of the Luxembourg Chamber of Skilled Trades and Crafts (*Chambre des métiers*) or the Luxembourg Chamber of Commerce (*Chambre de commerce*) or a professional activity of a mainly intellectual and non-commercial nature;
- holding more than 25% of the shares of a general partnership, a limited partnership or a limited liability company having as its object an activity as referred to in the first paragraph above and holding a valid business licence; or
- a board member, a general partner or a manager in charge of the day-to-day management of a public limited company, a limited partnership with shares or a cooperative society having as its object an activity as referred to in the first paragraph above and holding a valid business licence.

Self-employed workers exercising certain activities or professions as further detailed in the law (such as doctors or health professionals, artists or financial and insurance activities) cannot benefit from the allowance.

The granting of the allowance is subject to the following conditions:

- the self-employed worker was affiliated as such on 15 March 2020;
- he or she has the necessary authorisations and approvals for the activity he or she carries out as a self-employed worker;
- the professional income of the self-employed worker having served as the basis of calculation for the social security contributions for the year 2019 increased, where applicable, by the pensions paid by a pension insurance body must be equal or higher than half of the minimum social wage but not exceed the amount of 2.5 times the minimum social wage; and
- the self-employed person encounters temporary financial difficulties which have a direct causal link with the Covid-19 pandemic.

The allowance will be allocated upon written application to the Ministry of Middle Classes by the relevant person. The application must be filed by 15 July 2020 at the latest.

Self-employed workers that have already applied for an allowance under the grand ducal regulation of 6 May 2020 will not be authorised to apply for an allowance under the law.

The allowance is tax-exempt.

The financial support is subject to Regulation (EU) n° 1407/2013 and, in particular, may be cumulated with other *de minimis* aid provided that it does not exceed the ceiling provided for in the law.

Certified emergency allowances in favour of certain micro-enterprises and small enterprises as set up by the law of 20 June 2020

On 20 June 2020, a law was adopted to extend the possibility for certain micro-enterprises and certain small enterprises to apply for a certified emergency allowance as set up by the grand ducal regulations of 24 April 2020.

Aim

The law aims at replacing the grand ducal regulations of 24 April 2020 and renewing, for a limited period, the certified emergency allowances by way of law. Micro-enterprises and enterprises employing between 10 and 20 people will accordingly have until 15 July 2020 to apply.

Details

The allowance will be granted to (micro-)enterprises:

- that had to close their establishments or cease their activities pursuant to the amended grand ducal regulation of 18 March 2020 introducing a series of measures in the context of the fight against Covid-19 and that have not been authorised to resume their activities on 24 April 2020; or
- that had to close their establishments or cease their activities pursuant to the amended grand ducal regulation of 18 March 2020 introducing a series of measures in the context of the fight against Covid-19 and that have been authorised to resume their activities on 24 April 2020 but have suffered a loss of turnover of at least 50% during the period between 15 April 2020 and 15 May 2020; or
- that did not have to close their establishments or cease their activities pursuant to the amended grand ducal regulation of 18 March 2020 introducing a series of measures in the context of the fight against Covid-19 but have suffered a loss of turnover of at least 50% during the period between 15 April 2020 and 15 May 2020.

The granting of the lump-sum capital grant will be subject to the following conditions regarding the relevant enterprise:

- it has an annual turnover that is at least equal to or greater than EUR 15,000;
- it holds a valid business licence within the meaning of the amended act of 2 September 2011 in Luxembourg;
- it is validly affiliated with the Social Security;
- it is not active in one of the excluded sectors (fishing, agriculture etc.); and
- it has not contravened certain employment law provisions or governmental measures prescribed to fight Covid-19.

The allowance will take the form of a lump-sum capital grant of EUR 5,000 for micro-enterprises and EUR 12,500 for enterprises employing between 10 and 20 people and whose annual turnover does not exceed EUR 4,000,000.

Enterprises that have already applied for an allowance under one of the two grand ducal regulations of 24 April 2020 will not be authorised to apply for an allowance under the law.

The allowance will be allocated upon written application to the Ministry of Middle Classes by the relevant enterprise. The application will have to be filed by 15 July 2020 at the latest.

The allowance will be tax-exempt. This financial support will be subject to Regulation (EU) no 1407/2013 and, in particular, it will be possible to cumulate it with other *de minimis* aid provided that it does not exceed the ceiling provided for in that Regulation.

Litigation

As previously indicated in [our e-Alert of 27 May 2020](#), bill n°7587, which has now become enacted via the [law of 20 June 2020](#), maintains, on a short-term basis, some derogating measures related to deadlines in jurisdictional matters beyond the period of the state of crisis.

In particular, the deadlines governing the commencement of first instance proceedings before judicial, administrative and military courts, including periods of extinctive prescription, preclusion, foreclosure or forfeiture, and deadlines governing the commencement of informal appeals (*recours gracieux*), are extended as follows:

- time limits expiring during the state of crisis shall be extended by two months from the date of the end of the state of crisis; and
- time limits expiring in the month following the end of the state of crisis shall be extended by one month from their expiry date.

Bankruptcy proceedings

As previously indicated in [our e-Alert of 27 May 2020](#), bill n°7587, which has now become enacted via the [law of 20 June 2020](#), maintains, on a short-term basis, some derogating measures related to deadlines in jurisdictional matters beyond the period of the state of crisis.

In particular, the one-month period during which a (commercial) company or tradesman must file for bankruptcy after it has ceased submitting its payments is suspended from 18 March 2020 and for six months from the date of the end of the state of crisis.

Keeping abreast of the operational impacts of Covid-19 on our clients' businesses is important to us. Please [click here](#) to access our Covid-19 global microsite for more information as well as our insights on the situation as it evolves.

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