

Luxembourg takes additional corporate governance measures to mitigate impact of COVID-19

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Executive summary

As part of the company law measures taken by the Grand Duchy of Luxembourg in response to COVID-19 which started with the Grand-Ducal regulation dated 20 March 2020 (the Regulation), two new laws dealing primarily with the extension of deadlines for both approval and publication of annual accounts have entered into force on 12 and on 29 May 2020.

The Regulation was the first piece of law which introduced a series of measures addressing Luxembourg company law in the context of the declared state of emergency triggered by the COVID-19 outbreak. In summary, (see the prior EY Global Tax Alert on the topic¹), it provided that: (i) board and shareholders' meetings could be held in digital form; and (ii) the deadline for the annual shareholders' meetings which had to be held before 30 June 2020 (for instance, companies with a financial year closing on 31 October) was moved to 30 June 2020. Nevertheless, these measures, although welcomed, did not address certain filing deadlines nor the statutory deadline of 30 June 2020 to approve the annual accounts for companies whose financial year closed on 31 December 2019.

This Alert summarizes the extension of various deadlines implemented by the above-mentioned two new laws.

Detailed discussion

The law concerning the extension of the deadlines to submit and publish: (i) the annual accounts; (ii) the consolidated accounts; and (iii) related reports during the emergency state period (the Annual Accounts Law) was published and came into force on 29 May 2020.

It provides specific and limited derogations from the main laws regulating the approval and publication of the annual accounts, namely the Law of 19 December 2002 on the commercial and companies register and on the accounting and annual accounts of companies, as amended (the RCS Law), and the Law of 10 August 1915 on commercial companies, as amended (the Company Law).

The main derogations from the RCS Law and the Company Law are the following:

- ▶ The general meeting of the shareholders of all entities provided by article 8 of the Luxembourg Commercial Code can be convened within nine months from the closing date of the financial year. In other words, the customary six-month term provided by the Company Law to hold annual general shareholders' meetings to approve the annual accounts is extended by three months. **Therefore, for companies whose financial year ended on 31 December 2019, the last day to approve the annual accounts will be 30 September 2020 instead of 30 June 2020.**
- ▶ The deadline for the filing and publication of the annual accounts, consolidated accounts and related reports is extended by three months. **This means that the new deadline is 31 October 2020, instead of 31 July 2020, for companies whose financial year ended on 31 December 2019.**
- ▶ The three-month extension will also apply to article 1500-2 (2) of the Company law which sets sanctions for the managers and directors who fail to submit to

the general meeting within six months, computed as of the end of the financial year, the annual accounts, the consolidated accounts and the related reports.

The Annual Accounts Law only applies to those general shareholders meetings, annual accounts, consolidated accounts and related reports concerning financial years closed by the latest at the end date of the state of emergency² and whose deadlines for convening, filing and publication did not yet lapse on 18 March 2020.

In addition to the above discussed Annual Accounts Law, as of 12 May 2020, the financial sector benefits from a dedicated law dealing with similar matters, namely the Law concerning the extension of specific deadlines regulated by financial sector laws during the emergency state period (the FS Law).

The FS Law relaxes some of the corporate governance rules applicable to companies active in the financial sector. More precisely, it provides that the below deadlines, should they fall after 18 March 2020 and relate to matters closed by the end of the emergency state, are extended by a three-month period:

- (i) To publish the annual accounts and related reports by credit institutions and insurance and reinsurance companies
- (ii) To publish the annual and quarterly reports by securitization companies
- (iii) To communicate to the investors the annual report along with the auditor's conclusions by investment companies in risk capital (SICARs) and specialized investment funds (SIFs)
- (iv) To prepare the annual accounts and related reports by pension funds
- (v) To publish the quarterly reports by public placement funds

Endnotes

1. See EY Global Tax Alert, [Luxembourg announces new provisions for shareholders and board meetings in response to COVID-19](#), dated 25 March 2020.
2. The state of emergency was initially declared in the Grand Duchy of Luxembourg on 11 March 2020 for a period of 10 days. It was then extended on 21 March 2020 for three months. Consequently, unless otherwise decided by the Government, the end date of the state of emergency is 21 June 2020.

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