

COVID-19 – Director's Duties: Suspension of the obligation to file for insolvency

Insights - 08/04/2020

In light of the COVID-19 crisis, a Grand Ducal Regulation was published on 25 March 2020 (the **Regulation**)^[1] that suspends certain procedural deadlines applicable in civil and commercial matters during the Luxembourg state of crisis. The Ministry of Justice has clarified that this suspension also relates to insolvency matters.

As a general principle, where a company is in financial difficulty, a director/manager must act prudently and diligently. A director/manager of a Luxembourg company also has an obligation to file for bankruptcy within a thirty day period of a meeting where it is determined that the company is unable to pay its debts as they fall due and there is a loss of creditworthiness (the Filing Obligation).

The Regulation has been broadly welcomed by directors as it will relieve some of the pressure on them. Directors will be protected during the COVID-19 crisis and will then be able to concentrate on the company's operations without worrying about being personally liable due to circumstances outside of their control if the company ultimately fails.

The Regulation applies to the suspension of procedural deadlines relating to the Filing Obligation. It is effective as of 26 March and will remain in place until the current state of emergency is lifted. Therefore, where a company is in cessation of payments following the implementation of the Regulation and remains in such position after the end of the COVID-19 crisis, directors/managers will be obliged to file for insolvency thirty days after the state of emergency has ended.

Directors are still allowed to file for insolvency (aveu de faillite), and may feel obliged to do so depending on the circumstances of the company. Creditors may also petition for insolvency.

The Ogier team would be happy to chat through the implications for your business or your position as director.

[1] Règlement grand-ducal du 25 mars 2020 -

<http://www.legilux.public.lu/eli/etat/leg/rgd/2020/03/25/a185/consolide/20200402>

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Meet the Author



[Bertrand Gérardin](#)

Partner

[Luxembourg Legal Services](#)

E: bertrand.geradin@ogier.com

T: [+352 2712 2029](tel:+35227122029)

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