INSOL Europe/LexisNexis COVID-19 Tracker of Insolvency Reforms—Luxembourg

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Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of Luxembourg prompted by the coronavirus (COVID-19) pandemic. Written by Christel Dumont, Senior Counsel, Dentons, member of INSOL Europe.

In response to the coronavirus crisis, the state of emergency has been declared by the Luxembourg prime minister on the national territory as from 18 March 2020, and confirmed for three months by a law dated 24 March 2020 .This allows the government to take measures that are limited to what is indispensable and strictly necessary. The measures shall be proportionate and adequate with the aim pursued and in conformity with the constitution and international treaties.

Suspension of the deadline to file for insolvency

In the context of the state of emergency, a grand-ducal regulation was adopted on 25 March 2020 to suspend time limits in jurisdictional matters. The grand-ducal regulation entered into force on 26 March 2020.

The deadline to file for insolvency, which is one month as from the day the conditions to file for insolvency are met (ie suspension of payments/inability to pay due debts and inability to raise credit), is among the time limits in jurisdictional matters suspended. In this respect, the directors of a company who are under the legal obligation to file for insolvency within the one-month deadline are relieved from such obligation for the duration of the state of crisis. However, it is worthwhile noting that such an obligation will be revived as soon as the state of emergency is over.

It is also important to note that the grand-ducal regulation dated 25 March 2020, provides only for a suspension of the deadline. Therefore, if the one-month deadline to file for insolvency started before 25 March 2020, directors will have only the remaining days of the one-month deadline to file once the state of emergency is over and should continue to monitor carefully the situation of their distressed entities.

Jurisdictional matters

Creditors are still allowed to initiate insolvency proceedings against a debtor (through a writ of summons) and commercial courts still continue to deal with insolvency matters. However, only urgent matters (new insolvency or liquidations matters on special grounds of specific emergency, objections to insolvency judgments, sale authorisations and objections on wage claims) are heard by courts. In practice, since mid-March 2020 only nine new insolvency judgments have been issued.

Law proposal to prevent creditors filing for insolvency of their debtors

Some members of the parliament have filed a law proposal which aims to prevent creditors from filing for insolvency of their debtors during the state of emergency and the two subsequent months. The law proposal also suggests that the suspension of directors' deadline to file for insolvency be extended for the two subsequent months after the end of the state of emergency.

Aid scheme for firms in temporary financial difficulty

A law dated 3 April 2020 has established an aid scheme for firms in temporary financial difficulty for SMEs, industries and independents. Under the terms of this law, coronavirus is recognised as an exceptional event justifying having recourse to such specific aid regime. Under this regime, the main provisions are the following; micro enterprises can benefit from a financial non-reimbursable aid (of EUR 5,000), other enterprises can obtain a financial aid of a maximum amount of EUR 500,000—(reimbursable) from the State. Reimbursement of existing loans can be deferred and new banking loans are facilitated.

However, companies which were already in financial difficulties prior to 1 January 2020, are excluded from the benefit of the financial aids provided for by the law.

Other pending reforms

The Luxembourg parliament is still working on a bill of law aiming at the preservation of enterprises and modernisation of bankruptcy law. The bill of law was introduced in 2013 and will introduce a pre-insolvency framework, partly compliant with the EU Directive on restructuring and insolvency, which would be useful in the aftermath of the crisis.

INSOL Europe/LexisNexis COVID-19 Tracker of Insolvency Reforms

A tracker of insolvency reforms globally produced by Lexis Nexis in partnership with INSOL Europe is now available: Coronavirus (COVID-19) Tracker of insolvency reforms globally.

We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.