



Restructuring & Insolvency in times of crisis

Answers to our clients' "Top 10" questions



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Sébastien

Agenda

- Introduction
- Our clients' most frequently asked questions
- Q&A: 3 additional questions taken live !
- Concluding words



Clara

1. When is a Luxembourg company bankrupt?

- 2 cumulative conditions:
 - cessation of payments
 - loss of creditworthiness



Philippe

2. How can we avoid such a situation? Before bankruptcy ... is not bankruptcy ! (1/2)

- What are the specific bankruptcy risks COVID-19 is generating?
 - 2 specific parameters among others of COVID-19 crisis
 - 2 specific consequences on companies

- Facing unexpected and sudden liquidity shortage at company level? The quest for cash
 - Ensure accounting is up-to-date and able to rapidly produce partial financial statements
 - Accelerate updating of your cash-flow statement (or build it asap should you not have one yet)
 - Monitor costs line by line and promote flexibility e.g. by subcontracting as much as possible or even consider resource pooling
 - Options in Luxembourg
 - Start your quest for cash: lenders are flexible (said “2008 crisis”)



Philippe

2. How can we avoid such a situation? Before bankruptcy ... is not bankruptcy ! (2/2)

- Suffering from decreasing asset value? Laying low or cherry picking of opportunities
 - Increases the complexity of finding cash (collaterals value is decreasing)
 - Multiple and comparable for market transactions are decreasing since Covid-19 crisis beginning (cheap buy impact and risk-averse temporary climate)
 - DCF valuation are directly impacted by revenue delay
 - Business plans are obsolete and in need for a good update
 - Opportunistic times for distressed and private debt funds or PE players willing to bet on shrinking valuation to acquire some previously overpriced jewels

- And what about being prepared for the possible next wave? Some obvious and non-exhaustive best practices
 - At company level: anticipate – communicate – have backup plans
 - At PE level



Clara

3. Is it not possible to reorganise a Luxembourg company rather than liquidate it?

- Current reorganisation proceedings
 - Stay of payments
 - Composition with creditors to avoid bankruptcy
 - Controlled management

- Draft Law N°6539

4. Was specific legislation adopted in the context of the Covid-19 crisis impacting R&I topics?



Sébastien



Grégory

- Mandatory filing obligation
 - Extent of obligation
 - Covid-19: temporary suspension but limited impact for creditors
- What about the concept of “wrongful trading” in Luxembourg?
- Is it still possible to enforce security arrangements during the crisis? What would happen in the event of reorganisation or winding-up of a collateral provider (e.g. a pledgor)?



Grégory

5. What about the US Chapter 11 proceedings or UK scheme of arrangement for a Luxembourg company?

- US Chapter 11 proceedings
- UK scheme of arrangement
- Would these proceedings be recognised in Luxembourg?





Stéphane

6. Key considerations about board duties when facing financial difficulties? Is there a shift of focus from shareholders to creditors?

- Duties of the managers: the interest of the company first
- Distressed situations and role of the management
- Hard stop: when bankruptcy conditions are met

7. And what about board members' liability if our company goes bankrupt?



Stéphane

- Specific circumstances under which board members may be held liable:
 - Extension of bankruptcy
 - Action for coverage of liabilities (*action en comblement de passif*)
 - Prohibition from exercising
 - Bankruptcy criminal offences

8. Your questions taken live !



What challenges are you or your business facing today?



Sébastien

Concluding words

- Thank you for your attention !

Contact us



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Visit our dedicated page ***Arendt Covid-19 Solutions*** and install the ***Arendt Insights App*** to find the most frequently asked questions and our answers



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