



CAPITAL MARKETS AND CORPORATE M&A

Coronavirus: Impact on the activities of companies

The recent news on the Coronavirus (COVID-19), in particular, on its impact and spread, have made it imperative for us to consider the potential impacts – financial, operational and, in general, legal – on the lives of companies.

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Companies that operate in the areas most affected by the virus, or whose activity depends on suppliers or customers in those areas, must ensure they analyse its impact on their businesses activities very carefully. In particular, company directors are bound by duties of care and loyalty that require them to control the exposure of companies to the financial risk resulting from the impact of the Coronavirus. These duties require them to adopt a set of proactive measures. Directors are also bound by preventive information duties intended to protect the public and the people and companies they do business with.

In particular,

- o General meetings bring together a large group of shareholders. Therefore, they are a source of danger in the current situation and directors are bound by particular duties of care in relation to holding them. In particular, they should consider
 - i) Informing the shareholders about the risks associated with attending general meetings. They should also consider implementing safety guidelines and on-site contingency plans for holding the meetings. In doing so, they should ensure shareholders participation in a way that is consistent with the recommendations issued by the public authorities.
 - ii) If a situation of active transmission of COVID-19 arises, they must ensure the necessary resources and organise remote voting in general meetings. In particular, they have the options of voting by correspondence or voting electronically. They can also arrange for participation in meetings using video conferencing or other similar systems.
- o When it comes to contracts, directors must assess the impact that the spread of COVID-19 could have on complying with the obligations they have already assumed. Depending on the specific contract, there may be grounds to terminate it. In contrast, a default or definitive breach of the obligations assumed may not be considered unlawful. This could be the case, for example, under general legal rules such as those applying to a material adverse change, or in meeting the requirements under a force majeure clause or other similar clause. In any case, through their directors, companies are bound by an ancillary duty to inform the other party to a contract of any current or potential impossibility for them to ensure they comply with the obligations undertaken.

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- o In general, companies are subject to a duty to protect their employees and all those they come into contact with (whether this contact is a one-off meeting or a long-standing relationship). For this reason, companies have to implement the safety recommendations and contingency plans issued by the public authorities. Otherwise, they could be subject to liability. In particular, in their duties to their employees, companies must identify the foreseeable risks and adopt appropriate measures to eliminate them. When this is impracticable, they must act to mitigate the effects of those risks. In the event of serious and imminent danger that cannot be avoided, a decision may be taken to cease operations or to immediately send people home from their place of work. They would then not be able to resume operations while this danger persists, except in exceptional cases and provided that adequate protection is ensured. Any breach of these duties can amount to a very serious employment administrative offence and, in the event of a conviction, the directors and managers are jointly and severally liable for payment of the fine. Moreover, the breach may also give rise to liability for damages on the part of the company.
- o If the Coronavirus pushes weaker companies into a difficult economic situation, or into imminent or actual insolvency, there are certain duties that the directors must focus on, in particular:
 - iii) The fiduciary duties of directors towards the company's creditors must be deemed to have intensified: unlawful actions that result in the company having insufficient assets to meet its obligations can lead to civil liability.
 - iv) There is a duty to petition for insolvency within 30 days of becoming aware of the situation. Failure to meet this deadline can also give rise to civil liability.
 - v) In the event of a difficult economic situation or imminent insolvency, companies must consider using procedures like the PER (Special Revitalisation Process) or RERE (Out-of-court Scheme for Recovery of Companies). These both make it possible to create a breathing space, with favourable conditions to begin negotiations with creditors and to organise corporate restructuring.

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- o Finally, as regards listed companies, in specific cases, the impact of the Coronavirus on the company's financial situations may be information that could have a significant effect on the prices of their financial instruments. Therefore, this would be privileged information and it must be disclosed to the public as soon as possible, otherwise may give rise to the application of penalties and the creation triggering of liability. ■