

## NEW PROCEDURE OF ADMINISTRATIVE DISSOLUTION WITHOUT LIQUIDATION INTRODUCED IN LUXEMBOURG BY THE LAW OF 28 OCTOBER 2022

The law of 28 October 2022 (the "**Law**") introduces a simplified administrative dissolution procedure with the aim of dissolving commercial companies which have neither assets, nor employees and which are in violation of certain legal provisions.

### CONTEXT & OBJECTIVE

The Law is a response to the need to effectively deal with the significant number of companies in Luxembourg that are in violation of certain legal provisions, have no assets or employees, and regarding which their judicial liquidations or bankruptcy proceedings are a time-consuming burden for the courts and a substantial cost for the State.

The Law allows, subject to certain conditions, to dispose of these "empty shells" within a short period, by making it possible to dissolve a company without opening formal bankruptcy proceedings or a traditional judicial liquidation procedure in accordance with the provisions of the Commercial Code, respectively Article 1200-1 of the amended law of 10 August 1915 on Commercial Companies.

It is an administrative procedure, initiated by the State prosecutor, but undertaken by the administrator (the "**RCS Administrator**") of the Luxembourg Trade and Companies Register ("**RCS**").

### SCOPE

A company may be dissolved under this new procedure if the three following cumulative conditions are met:

- i. the company falls within the scope of article 1200-1 of the amended law of 10 August 1915 on Commercial Companies, i.e., the relevant company performs activities that are in violation of criminal law or that seriously contravene the provisions of the Commercial Code or the laws governing commercial companies, including in relation to the right of establishment (typical examples being the absence of a registered office, resignation of the entire board of directors that has not been replaced, or failure to file the annual accounts with the RCS);

### Key issues

- Applicable to companies which are in breach of certain legal provisions and have neither assets nor employees.
- The procedure is initiated by the State prosecutor and undertaken by the RCS Administrator.
- The administrative dissolution procedure in relation to a company is closed no later than six months after the publication of the decision to open the procedure.
- The Law also amends the Commercial Code to specify that the closing judgment of bankruptcy proceedings (*faillite*) will entail the dissolution of the company and closing of the liquidation of the company, which was not previously the case.

- ii. the company holds no assets; and
- iii. the company does not have any employees. For the companies which do have employees, it was considered that the new procedure would not be appropriate in view of the more complex situation that the exists.

It is worth noting that certain entities that are specifically regulated do not fall within the scope of this procedure. Accordingly, amongst others, credit institutions, insurance and reinsurance companies, certain types of investment funds, certain securitisation vehicles, and companies exercising the profession of lawyers are excluded from this procedure.<sup>1</sup>

## PROCEDURE

Despite its administrative nature, the procedure is initiated by the State prosecutor who requests the RCS Administrator to open the procedure if precise and consistent indications exist that the above three criteria are met.

The RCS Administrator will open the administrative dissolution procedure without liquidation within three days of the State prosecutor's request and will notify the decision to initiate the procedure by registered letter addressed to the company (with acknowledgement of receipt required) and publish the notice in two Luxembourg newspapers and the *Recueil électronique des sociétés et associations* (RESA).

As of such publication, the Law provides that article 444 of the Commercial Code will apply pursuant to which the management of the relevant company will be divested of any management powers and any payments made or operations and actions undertaken by the company, as well as all payments made to the company, will be null and void by law.

The RCS Administrator will then carry out various searches (notably with credit institutions, non-life insurers, the register of mortgages and the land register, the automobile register, social security agencies) to verify the absence of assets and employees and will inform the State prosecutor of the results. If it is confirmed that all of the above conditions are met, the State prosecutor will request the RCS Administrator to pursue the procedure. If the conditions are not all met, the State prosecutor will ask the RCS Administrator to cease the procedure and the decision to cease the procedure will be published in the *Recueil électronique des sociétés et associations* (RESA).

The Law provides for the possibility of appealing the decision to open the procedure before the president of the chamber of the District court (*Tribunal d'arrondissement*) sitting in commercial matters, ruling in summary proceedings (*en référé*). The appeal must be filed within one month after the publication of the decision to open the procedure.

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<sup>1</sup> Listed in Article 2 of the Law.

## **EFFECT**

The administrative dissolution procedure without liquidation is closed no later than six months after the publication of the decision to open the procedure.

The decision to close the procedure is taken by the RCS Administrator and is published in the *Recueil électronique des sociétés et associations* (RESA).

The effect of the decision to close the procedure results is the dissolution of the company.

If assets are discovered after the closing of the administrative dissolution, the District Court sitting in commercial matters may, at the request of the State prosecutor, annul the decision to close the administrative dissolution and order the liquidation of the company.

## **CLOSING OF BANKRUPTCY PROCEEDINGS AND TRANSITORY MEASURES**

Unrelated to the new procedure of administrative dissolution, the Law also amends the Commercial Code to specify that the closing judgment of bankruptcy proceedings (*faillite*) will also entail the dissolution of the company and closing of the liquidation of the company, which was not previously the case.

Lastly, the Law provides for certain transitory measures regarding companies whose bankruptcy proceedings were closed prior to the entry into force of the Law. For such companies which have not remedied any non-compliance with their filing and registration obligations with the Luxembourg Trade and Companies Register after the judgment closing their bankruptcy proceedings, the Law provides that they will be dissolved by operation of law and struck off from the Luxembourg Trade and Companies Register two years after the entry into force of the Law, and fifteen days after the publication in the RESA of a notice by the RCS Administrator stating the absence of filings and registration.

## **ENTRY INTO FORCE**

The Law was published on 4 November 2022 and will enter into force on 1 February 2023, corresponding to the first day of the third month following its publication in the Official Journal of the Grand Duchy of Luxembourg.

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