

Everything you need to know about the new procedure for administrative dissolution without liquidation of empty shell companies

The Luxembourg legislator has introduced a new procedure to wind up commercial companies: administrative dissolution without liquidation. The aim of this new procedure is to eliminate empty shell companies swiftly, i.e. commercial companies with no employees and no assets that are in severe breach of company law.

This procedure is mainly administrative and cannot exceed six months.

On 28 October 2022, bill of law no 6539B was passed in order to introduce into Luxembourg law the administrative dissolution without liquidation procedure to eliminate commercial companies with no employees and no assets meeting the conditions for judicial dissolution (the **Act**). The procedure is targeted at commercial companies that have been neglected by their management and shareholders and no longer comply with mandatory company law provisions. Examples include no longer having a registered office, no new directors appointed to replace directors who have resigned and/or failing to file and publish annual accounts.

The new procedure, which does not require the intervention of a judge, will allow the swift elimination of these companies and avoid the costs associated with opening full judicial dissolution proceedings.

More details on the new procedure are set out below.

1. Three cumulative conditions must be met to initiate the procedure

The administrative dissolution without liquidation procedure will only apply to commercial companies that meet the following three cumulative conditions:

- (a) they have no assets;
- (b) they have no employees; and
- (c) they pursue activities contrary to criminal law or are in serious contravention of the provisions of the Commercial Code or the laws governing commercial companies, including the right of establishment (e.g. no registered office, failure to duly and timely file and publish annual accounts, no renewal of resigning officers etc).

The following are expressly excluded:

- (a) individual traders who exercise their commercial activity under their personal names, individual partners of a general partnership (*société en nom collectif*) and companies constituting the Luxembourg branch of foreign companies; and
- (b) credit institutions, investment firms and insurance and re-insurance companies subject to prudential supervision, as well as certain investment funds and vehicles.

2. The procedure is swift and largely administrative

The procedure will be initiated by the Luxembourg Business Registers (the **LBR**) at the request of the public prosecutor (*procureur d'Etat*) when there are clear and concordant indications that the company meets the three cumulative conditions.

The LBR will then undertake a screening exercise (similar to that usually performed by the liquidators) to confirm that the conditions for administrative dissolution without liquidation are met. The Act grants the LBR investigative powers to fulfil its mission (for instance, the LBR will be able to request information on the financial or administrative situation of the company from credit institutions in which the company has bank accounts, non-life insurance companies that are subject to Luxembourg law, the common social security centre CCSS, etc).

If the screening exercise confirms that the company has no assets and no employees, the procedure will continue and must be closed at the latest six months after the publication of the decision to open the procedure. The decision to close the procedure entails the dissolution of the company.

If the screening exercise shows that the company does have assets or employees, the proceedings will be stopped.

There is no procedure for the verification of claims. However, if assets appear after the closure of the proceedings, a normal liquidation procedure may be opened.

3. A judge may revoke the decision to initiate the procedure

The decision to initiate the procedure may be challenged before a judge within one month of the publication of such decision by the relevant company or any interested third party.

If the judge considers that the conditions for administrative dissolution without liquidation have not been met, the decision to initiate the procedure may be revoked.

4. The procedure will also apply to bankrupt companies whose bankruptcy proceedings have come to an end

The Act also introduces new provisions regarding companies for which bankruptcy proceedings have been closed.

Companies for which bankruptcy proceedings have been closed before the entry into force of the Act and which remain registered with the Luxembourg trade and companies register (the **RCS**) will be dissolved by operation of law and removed from the RCS two years after the entry into force of the Act unless the company has fulfilled its legal obligations regarding registration and filing with the RCS. The dissolution will become effective 15 days after the publication of a notice by the LBR in the *Recueil électronique des sociétés et associations* (RESA) concerning the absence of registration and filing.

For any company for which bankruptcy proceedings have been closed after the entry into force of the Act, the judgment of closure of the bankruptcy operations dissolves the legal person and entails immediate closure of its liquidation.

5. The Act will enter into force on 1 February 2023

The Act will enter into force on the first day of the third month following its publication in the Official Journal of the Grand Duchy of Luxembourg, i.e. on 1 February 2023

For further information on the topic, please reach out to your usual A&O contact or any of the relevant contacts below.

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