



## New procedure of administrative dissolution without liquidation in Luxembourg

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The first step to modernise Luxembourg insolvency rules has been taken with the introduction of the so-called “administrative dissolution without liquidation”. The purpose of this new procedure is to accelerate the dissolution of companies by striking off companies that are breaching Luxembourg law, and have ceased their activities.

A new law of 28 October 2022 (the “**New Law**”) (accessible [here](#)) has been adopted to introduce an innovative procedure of administrative dissolution without liquidation in Luxembourg. A separate workstream contained in a draft law n°6539A aiming to modernise insolvency law is still pending before the *Chambre des Députés*.

### Scope

This new procedure of administrative dissolution without liquidation may apply to a commercial company which meets the following three cumulative conditions:

- > it falls within the scope of article 1200-1 of the Luxembourg law of 10 August 1915 on commercial companies, as amended (i.e. it pursues activities in breach of criminal law or seriously infringes the provisions of the Commercial Code or the laws governing commercial companies, including the right of establishment);
- > it has no employees; and
- > it has no assets.

A significant number of players of the finance and insurance sectors are excluded from the scope of the New Law, namely credit institutions and investment firms, insurance and reinsurance companies, undertakings for collective investment, specialised investment funds,

investment companies in risk capital, central counterparts, central securities depositaries, pension funds, securitisation undertakings issuing securities to the public on an ongoing manner, payment institutions and electronic money institutions, reserved alternative investment funds, and *sociétés d’avocats*.

### Procedure

Where there are precise and consistent evidence that the company meets the above-mentioned conditions, the State prosecutor (*procureur d’Etat*) may request the manager of the Luxembourg register of commerce and companies (*Registre de commerce et des sociétés*) (the “**RCS**”) to open the procedure of administrative dissolution without liquidation.

Within three days following the State prosecutor’s request, the manager of the RCS will (i) notify the decision by registered letter with acknowledgement of receipt to the company’s registered office and (ii) have the decision published in newspapers and in the Luxembourg electronic gazette (*Recueil Électronique des Sociétés et Associations*) (the “**RESA**”).

The manager of the RCS will carry out a mission of verification and will require to that effect the communication of information on the financial or administrative situation of the company from credit institutions with whom one or several bank

accounts, payment accounts or safes are opened in the name of the company and public institutions notably. The entities contacted for the purpose of this mission of verification shall respond within one month as from the request. In the absence of timely response, the manager of the RCS will continue the procedure.

After having assessed the company's situation, the manager of the RCS will inform the State prosecutor of the results and depending on that, the procedure will be continued. If it appears that one of the conditions for dissolution has not been met, the procedure will be discontinued, and this decision will be published in the RESA.

Alternatively, the procedure will continue and result in the dissolution of the company and the closing of the procedure which shall be published in the RESA.

The procedure of administrative dissolution without liquidation shall close at the latest six months after the publication of the decision to open the procedure.

### Remedies

The company, as well as any interested third party (e.g. shareholders or creditors) may lodge an appeal against the decision with the president of the district court (*tribunal d'arrondissement*) sitting in commercial matters within one month

following the publication of the decision in the RESA.

### Additional amendments

The New Law also purports to create an insolvency register (*Registre de l'insolvabilité* or *REGINSOL*) available on the website of the manager of the RCS in accordance with Regulation (EU) 2015/858 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) where information on insolvency proceedings available with the RCS will be contained.

### Timing

The New Law will come into force on 1 February 2023 (i.e., the first day of the third month following its publication in the Official journal of the Grand Duchy of Luxembourg (*Journal Officiel du Grand-Duché de Luxembourg*)).

Companies whose bankruptcy proceedings have been closed prior to the entry into force of the New Law (with the exception of companies having updated their file with the RCS in accordance with their legal obligations with respect to registrations and filings with the RCS after the judgement of closing of the bankruptcy) shall be dissolved *ipso jure* two years after the entry into force of the New Law and fifteen days after the publication of a notice by the manager of the RCS in the RESA.

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