

Introduction of a new procedure for administrative dissolution without liquidation under Luxembourg law



On 28 October 2022, a new law was adopted in Luxembourg creating an administrative procedure to dissolve companies without liquidation. The aim of this procedure is to eliminate empty shell companies swiftly and at reduced costs (in comparison to the existing procedures). The law will enter into force on 1 February 2023.

Conditions

A company falling within the scope of this law shall imperatively meet the following three cumulative conditions:

1. It has no assets;
2. It has no employees; and
3. Its activities are contrary to Luxembourg criminal law or the company seriously contravenes the provisions of the Commercial Code or the laws governing commercial companies in Luxembourg (including the laws governing authorisations to do business).

The new law targets commercial companies that have repeatedly breached the Luxembourg company law, such as the lack of having a registered office, the resignation of the entire board without replacement or the repeated failure to file and publish its annual accounts.

Credit institutions, investment firms, insurance and re-insurance companies subject to prudential supervision, as well as certain investment funds and vehicles are expressly excluded from the scope of the new law.

Procedure

Where there are clear and concordant indications that a company meets the above described conditions, the public prosecutor (*procureur d'Etat*) shall request the administrator of the Luxembourg Business Registers (the LBR) to initiate the proceeding for administrative dissolution without liquidation.

The LBR shall open the procedure within three days of the request by the public prosecutor. This decision shall be published on the electronic central platform of official publications concerning companies and associations (*Recueil Electronique des Sociétés et Associations*) (RESA) and is notified to the company.

The LBR then verifies whether all conditions set out above are fulfilled by requesting information on the financial and administrative situation of the company from credit institutions, insurance companies and several relevant administrations.

In case the LBR concludes that all three conditions are met, the procedure will be closed and that decision is published on the RESA. This publication automatically results in the dissolution of the company.

In case the LBR concludes that one or more conditions are not met, the procedure will be stopped and the decision to do so shall also be published on the RESA.

Any administrative procedure to dissolve a company must be closed within six months after the publication of the decision opening the procedure.

Remedies

The company or any interested third party in whose opinion the conditions are not fulfilled, may challenge the decision to open the administrative dissolution procedure before a judge within one month of the publication of such decision. If the judge agrees, the dissolution procedure shall be stopped and such judicial decision shall be published on the RESA.

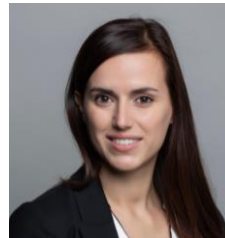
Should assets appear after the closure of the administrative dissolution a company, a court may, at the request of the public

prosecutor, revoke the decision to close the administrative dissolution procedure and order the liquidation of the company.

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