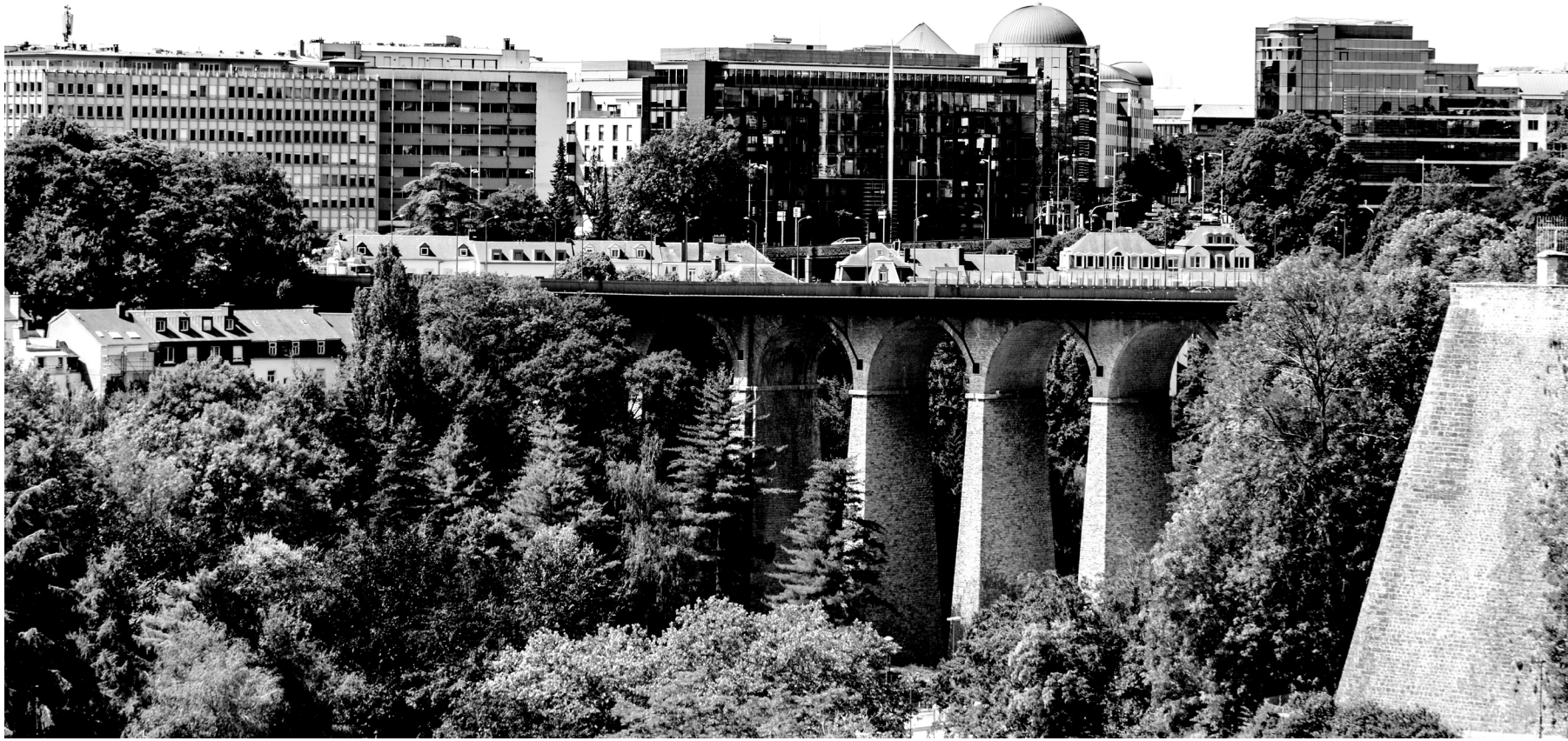
A&O SHEARMAN

Restructuring across borders
Luxembourg

CORPORATE RESTRUCTURING AND INSOLVENCY PROCEDURES | APRIL 2025



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Introduction

Luxembourg adopted an important insolvency reform during the summer 2023. The Luxembourg act dated 7 August 2023 on business continuity, restructuring and the modernisation of the bankruptcy regime (the **LBCA**) entered into force on 1 November 2023.

The main amendments under the LBCA include:

- the implementation of detection and prevention measures with a view to detecting the financial difficulties of a business at an early stage and facilitating business preservation;
- the introduction of new judicial and extra-judicial reorganisation procedures;
- a number of changes to the existing Luxembourg bankruptcy (*faillite*) regime; and
- the abolishment (except for currently pending procedures) of certain obsolete insolvency procedures (controlled management, composition with creditors and reprieve from payment[1]) which were rarely used in practice.

The LBCA also implements the *de minimis* requirements of the restructuring frameworks directive EU 2019/1023 into Luxembourg law.

The new restructuring options under the LBCA complete the already existing range of (mainly consensual and solvent) restructuring options under Luxembourg law.

It remains to be seen (i) how and to what extent the new reorganisation procedures will be used in practice by local and international players, and (ii) how the Luxembourg insolvency practitioners and judiciary will receive and implement the LBCA on the ground.

The LBCA does not affect the special protection of collateral arrangements under the Luxembourg act of 5 August 2005 on financial collateral arrangements, as amended. In particular, the court-sanctioned moratorium (*sursis*) in the context of a judicial reorganisation will not affect the enforceability of security or netting / set-off arrangements under that act.

Following the entry into force of the LBCA, the five principal restructuring and insolvency regimes for companies under Luxembourg law are:

- bankruptcy (*faillite*);
- reorganisation by amicable agreement (*réorganisation par accord amiable*);
- judicial reorganisation (*réorganisation judiciaire*);
- compulsory winding-up[2]; and
- administrative dissolution without liquidation[3].

Luxembourg regulated entities are subject to special insolvency regimes which will not be further described in this factsheet.

[1] The reprieve from payment regime (*sursis de paiement*) was intended to be abolished by the LBCA. However, arguably, due to a legislative mistake, this was not actually achieved. In light of its practical irrelevance, we do not further describe this regime in this factsheet.
[2] Compulsory winding-up is, strictly speaking, not an insolvency procedure (although it generally has the same effect).
[3] Administrative dissolution without liquidation is, strictly speaking, not an insolvency procedure (but rather an administrative procedure).

Bankruptcy (*faillite*)

Where a company has ceased to make payments, is unable to meet its commitments (*cessation des paiements*) and has lost its creditworthiness (e.g. loss of ability to obtain credit or new moneys) (*ébranlement du crédit*), the court in the district where the company has its principal place of business may declare the company bankrupt either:

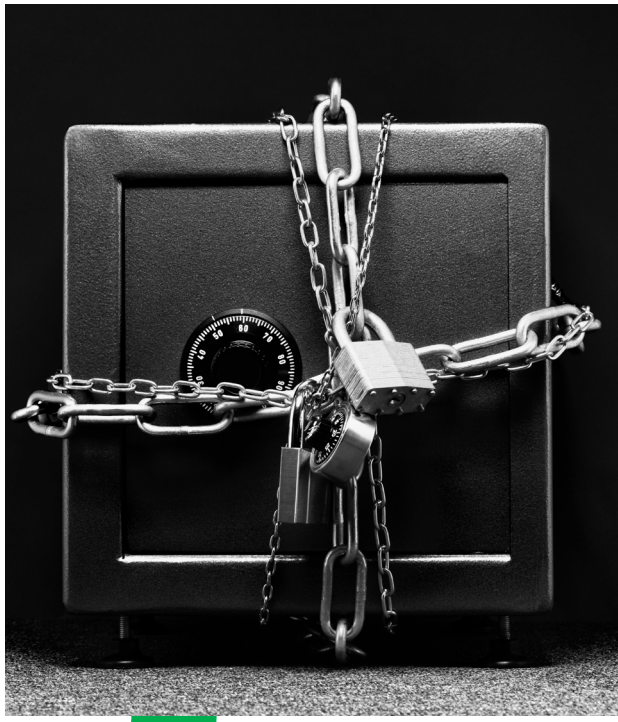
- upon acknowledgement (*aveu*) by the company;
- at the request of a creditor;
- at the request of the public prosecutor; or
- upon its own initiative.

The general purpose of the bankruptcy procedure (which is a liquidation procedure) is to realise the assets of the debtor and to distribute the proceeds to its creditors.

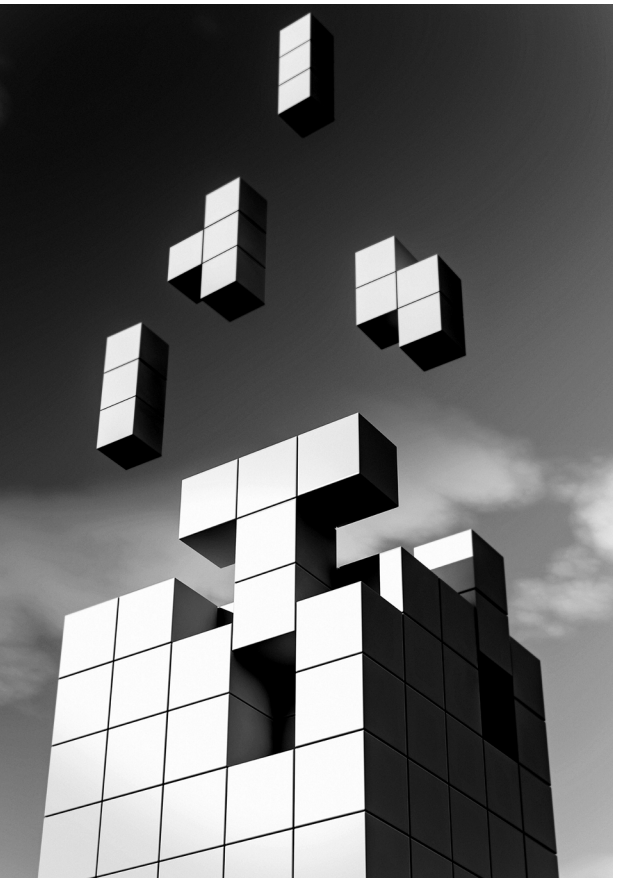
From the date of the bankruptcy order up to the date of the closing of the bankruptcy procedure, the bankrupt company and its directors lose control of the administration of the company and the ability to deal with its assets. These tasks are entrusted to one or more receivers (*curateurs*) appointed by the court.

In addition, the making of the bankruptcy order removes the right of creditors to obtain individual enforcement of their rights against the debtor. They must submit all their claims to the appointed receiver.

The LBCA suspends the statutory obligation for the directors of a Luxembourg company to declare the cessation of payments (*cessation des paiements*) as from the filing of an application for judicial reorganisation and until the expiry of the moratorium (*sursis*) as determined by the court.



Reorganisation by amicable agreement (*réorganisation par accord amiable*)



Reorganisation by amicable agreement constitutes an extrajudicial procedure to allow a debtor to negotiate an amicable agreement with its creditors (or at least two of them) which aims at reorganising (all or part of) its assets or activities.

The debtor may request the appointment of a business conciliator (*conciliateur d'entreprise*) whose mission is typically to prepare and facilitate the conclusion of the amicable agreement and who can also assist with the performance of the amicable agreement.

Once an amicable agreement is reached with the relevant creditors, the debtor is entitled to apply to the court to obtain a certification (*homologation*) of the agreement. The court will assess whether or not the purpose of the amicable agreement is to reorganise (all or part of) the debtor's assets or activities to grant the certification which will render the amicable agreement enforceable. Certain clawback provisions do not apply to the certified amicable agreement nor to any implementing acts thereunder.

The certification (*homologation*) decision is not published.

Judicial reorganisation (*réorganisation judiciaire*)

The purpose of a judicial reorganisation procedure is to preserve, under the supervision of a judge, the continuity of all or part of the assests or activites of the undertaking.

The opening of a judicial reorganisation procedure aims at obtaining a moratorium (*sursis*) with a view to:

(i) allowing the conclusion of an amicable agreement;

(ii) securing the agreement of the creditors on a reorganisation plan (collective agreement); and/or

(iii) transferring all or part of the undertaking or its activities.

The application for judicial reorganisation may pursue a separate objective for each line of business or any part of the business.

The debtor remains (subject to certain exceptions) in control of the procedure under the supervision of the court.

The judicial reorganisation is opened by a decision of the district court ruling on the application of the debtor if it can show that its business is jeopardised (mise en péril de l'entreprise), either in the short or the longer term.

If this condition appears to be met, the court will declare the opening of the judicial reorganisation and set the duration of the moratorium (*sursis*) with respect to enforcement measures (*voies d'exécution*) (subject to certain exceptions) aimed at recovering debts. The maximum moratorium period must, however, not exceed **four months** after the decision to open the judicial reorganisation procedure (which, depending on the circumstances, can be extended to a maximum of **up to twelve months**).

During this moratorium period (i) no individual enforcement action of outstanding creditors (*créanciers sursitaires*) is permitted, and (ii) the debtor may not be declared bankrupt (except at its own initiative) or, in the case of a company, be subject to compulsory winding-up or be subject to administrative dissolution without liquidation.

Compulsory winding-up[4]

Compulsory winding-up is governed by Arts. 1200-1 to 1200-3 of the Luxembourg act of 10 August 1915 relating to commercial companies, as amended.

The purpose of a compulsory winding-up is to terminate a company, or any establishment of a foreign company, which pursues activities contrary to criminal law or which seriously contravene the laws applicable to commercial companies, including laws relating to the establishment of businesses (e.g. where the company has no known place of business, the directors of the company have resigned and no new directors have been appointed, the annual accounts of the company have not been prepared and published in accordance with the law, etc).

Compulsory winding-up is ordered by the court upon application of the public prosecutor. A supervising judge and one or more liquidators are appointed and may determine the way in which the liquidation is to proceed, and the extent to which, if at all, the rules governing bankruptcy should apply.

If assets appear after the closure of the liquidation, a reopening of the liquidation might be ordered at the request of the public prosecutor.

[4] Compulsory winding-up is, strictly speaking, not an insolvency procedure (although it generally has the same effect).

Administrative dissolution without liquidation (*dissolution administrative sans liquidation*)[5]

Administrative dissolution without liquidation is a procedure aimed at eliminating commercial companies with no employees and no assets that meet the conditions for compulsory winding-up[6]. The procedure is initiated by the Luxembourg Business Registers at the request of the public prosecutor when there are clear and concordant indications that the company meets the three cumulative conditions.

A screening exercise is then undertaken by the Luxembourg Business Registers to confirm that the conditions for administrative dissolution without liquidation are met. If the screening exercise confirms that the company has no assets and no employees, the procedure continues 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 has assets or employees, the procedure is stopped. The public prosecutor may request the opening of a compulsory winding-up procedure if the conditions are met.

If assets appear after the closure of the procedure, a liquidation might be ordered at the request of the public prosecutor.

European Insolvency Regulation

The EU Regulation on Insolvency Proceedings 2015 (Regulation (EU) 2015/848) (the **Recast Regulation**) applies to all proceedings opened on or after 26 June 2017 and referred to in Annex A thereof.

[5] Administrative dissolution without liquidation is, strictly speaking, not an insolvency procedure (but rather an administrative procedure).
[6] Companies which perform activities contrary to criminal law or which seriously contravene the provisions of the Commercial Code or the laws governing commercial companies including laws relating to the establishment of businesses.

Key contacts

If you require advice on any of the matters raised in this document, please contact any of our partners or your usual contact at A&O Shearman, or email **rab@aoshearman.com**

A&O SHEARMAN

Pierre Schleimer
Partner

Tel +352 44 44 55 716
pierre.schleimer@aoshearman.com

Andreas Hommel
Partner

Tel +352 44 44 5 5102
andreas.hommel@aoshearman.com

Bénédicte Kurth
Counsel – Head of Knowledge

Tel +352 44 44 55 718
benedicte.kurth@aoshearman.com

Lukas Vondrich
Counsel

Tel +352 44 44 5 5204
lukas.vondrich@aoshearman.com

Pierre-Henry Maroteaux
Counsel

Tel +352 44 44 5 5125
pierre-henry.maroteaux@aoshearman.com

Katrina Buckley
Global Co-Head of Restructuring

Tel +44 20 3088 2704
katrina.buckley@aoshearman.com

Fredric Sosnick
Global Co-Head of Restructuring

Tel +1 212 848 8571
FSosnick@aoshearman.com

Lucy Aconley
Counsel

Tel +44 20 3088 4442
lucy.aconley@aoshearman.com

Christopher Poel
Senior Knowledge Lawyer

Tel +44 20 3088 1440
christopher.poel@aoshearman.com

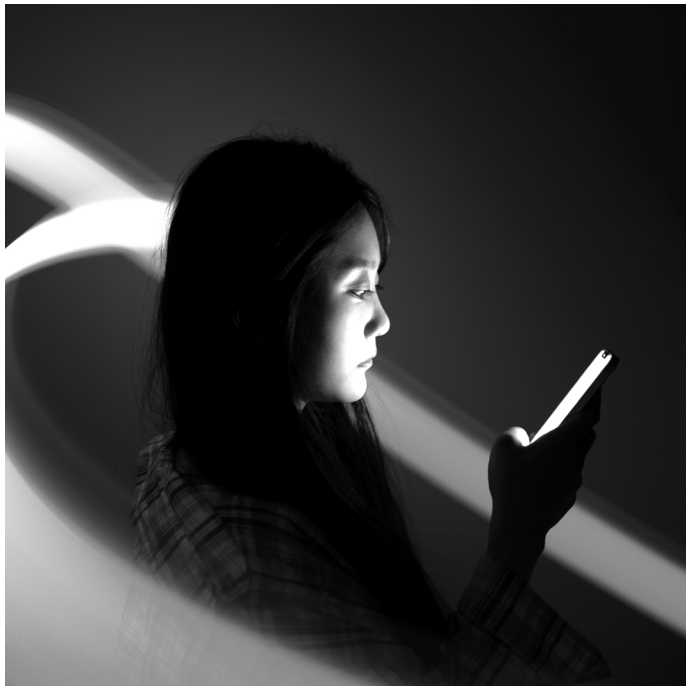
Ellie Aspinall
Associate

Tel +44 20 3088 1124
elena.aspinall@aoshearman.com

Further information

Developed by A&O Shearman's market-leading Restructuring Group, "**Restructuring Across Borders**" is an easy-to-use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe, Asia, the Middle East and the U.S.

To access this resource, please **click here**.



For more information, please contact:

LUXEMBOURG

Allen Overy Shearman Sterling LLP
5 Avenue John F. Kennedy
L-1855
Luxembourg

Tel + 352 44 44 55 1

LONDON

Allen Overy Shearman Sterling LLP
One Bishops Square
London
E1 6AD
United Kingdom

Tel +44 20 3088 0000
Fax +44 20 3088 0088

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