



Luxembourg's bankruptcy framework is about to change

What's new on 1 November 2023?

The Business Preservation Law of 7 August 2023¹ is set to enter into force on 1 November 2023 and will bring substantial changes to Luxembourg's bankruptcy framework.

Most notably, the outdated controlled management (*gestion contrôlée*) and preventive creditor composition (*concordat préventif de la faillite*) procedures are repealed and replaced by a modern framework allowing for business restructuring so as to ensure business continuity.

Under the new framework, business restructuring can be reached either by agreement or through court proceedings (i.e., judicial business restructuring).

Judicial business restructuring (*réorganisation judiciaire*) is meant to achieve one of the following three outcomes in case a distressed business is jeopardized;

(i) secure a payment standstill to reach an agreement with (part of) the creditors, (ii) obtain creditor consent to a business restructuring plan, or (iii) procure a court decision transferring all or part of a business' assets or activities to a third party.

As soon as an application for judicial business restructuring has been filed with court, the distressed debtor is, subject to certain exceptions, protected against bankruptcy, judicial dissolution, administrative dissolution, and enforcement. Protection is generally extended in case the court resolves to grant the application and subsequently open a judicial business reorganization procedure.

Judgments denying or granting an application for judicial business restructuring can be appealed within the context of an expedited appeal procedure, but parties will not be allowed to file for their setting aside (or opposition).

The distressed debtor can, at any time during the judicial restructuring procedure, either apply to modify the objective of the procedure or terminate judicial business restructuring by withdrawing its application. Judicial business restructuring can also

be terminated early if it becomes apparent that the distressed debtor is no longer able to ensure business continuity or filed wrong or incomplete information with its application to court.

Apart from introducing business restructuring, the Business Preservation Law has also brought much needed improvements to the already existing bankruptcy legal framework.

Whilst bankruptcy was traditionally limited to commercial entities and persons, any craftsman or person pursuing an independent professional, industrial or liberal activity will now also be able to apply for bankruptcy and benefit from its framework.

Amongst other changes, the State Prosecutor is now also given the legal authority to commence a bankruptcy suit.

Liability suits against bankruptcy receivers will be governed by a new statute of limitation of 5 years from the moment the bankruptcy termination judgment is entered.

The period to appeal bankruptcy judgments has also been extended from 15 to 40 days.

The court will now be legally empowered to order multiple directors/managers to pay jointly and severally the remaining debts (in part or in whole) in case gross wrongdoings contributed to the company's bankruptcy.

In line with EU Directive 2019/1023², second chance rules have been introduced allowing bankrupt persons and their personal guarantors to apply for a discharge of their liabilities that arose prior to the bankruptcy judgment.

Also important to note, whilst the period to file proofs of claim has been legally extended to six months, the new limitation period is now mandatory and late filings will be time-barred.

A legal procedure has been formally introduced to solve situations where assets of a company are

¹ Law of 7 August 2023 concerning business preservation and modernizing bankruptcy law

² Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring

frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.



discovered once the company's bankruptcy has been formally terminated. In such a scenario, courts will now be able to effectively cancel and transform the company's bankruptcy into what effectively resembles a judicial liquidation.

Identical rules have also been introduced in order to allow the court to cancel the termination of a judicial liquidation in case assets are discovered.

The Business Preservation Law has also tightened the rules on fraudulent bankruptcy.

The felony of simple fraudulent bankruptcy has been largely extended to company directors/managers and the criminal sanction has been reinforced by adding a fine of EUR 251 to EUR 25.000,- to the already existing one month to two years prison sentence.

The same holds true for the crime of severe fraudulent bankruptcy, which has been reinforced with a criminal fine of EUR 500,- to EUR 50.000,-.

Please do not hesitate to reach out to your experts at Harvey should you wish to discuss the impacts these changes may have on your business activities.



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