

28/10/2022

The Luxembourg Parliament has recently adopted a new law creating a procedure for administrative dissolution without liquidation of companies (the “Administrative Dissolution”).

This law, dated 28 October 2022, introduces a new mechanism of dissolution which allows the State prosecutor (in collaboration with the entity operating the Luxembourg Trade and Companies Register (“RCS”)) to request administrative dissolution without liquidation of certain commercial companies. Indeed, many companies under liquidation have no assets. This new procedure will allow the elimination of “empty shells” in a short period of time and with reduced costs for the State.

Three cumulative conditions must be met to allow an Administrative Dissolution:

- > the company is a commercial company falling under the provisions of article 1200-1 paragraph 1 of the amended law of 10 August 1915 on commercial companies (*i.e.* the company (i) pursues activities that contravene criminal law or (ii) seriously contravenes the provisions of the commercial code or the laws on commercial companies, including the laws governing authorisation to do business);
- > the company has no employees; and
- > the company has no assets.

It should be noted that the Administrative Dissolution shall not apply to certain entities that are subject to regulatory supervision (such as banks and insurance companies).

The procedure is as follows:

- > identification by the State prosecutor of the relevant companies that met the conditions for the Administrative Dissolution;
- > request by the State prosecutor to the RCS to open the Administrative Dissolution (the decision to request the opening of the Administrative Dissolution remain at the entire and sole discretion of the State Prosecutor);
- > opening by the RCS of the Administrative Dissolution within 3 days of the request made by the State prosecutor;
- > notification by the RCS of the decision to open the Administrative Dissolution by registered letter with acknowledgment of receipt sent to the registered office of the company;
- > publication by the RCS of the decision to open the Administrative Dissolution by extracts within three days in two Luxembourg newspapers and in the *Recueil Electronique des Sociétés et Associations* (“RESA”);
- > possibility to lodge an appeal against such decision within one month of the date of publication in the RESA of the opening decision;
- > verification by the RCS of the conditions of the Administrative Dissolution and information of the State prosecutor;
- > if, after carrying out his mission of verification, the conditions are met, the State prosecutor will request the RCS to continue the Administrative Dissolution. If the conditions are not met, the State prosecutor will request the RCS to stop the procedure (the decision to stop the procedure is published in the RESA);
- > the Administrative Dissolution is closed no later than 6 months after publication of the opening decision;
- > publication in the RESA of the decision to close the Administrative Dissolution. The closing decision automatically leads to the dissolution of the company.

The new law will enter into force on 1 January 2023.

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