

02/11/2023

The new law on business continuity and modernising bankruptcy law entered into force on 1 November 2023

The law of 7 August 2023 on business continuity and modernising bankruptcy law (hereafter the “**Law**”) which implements the Directive (EU) 2019/1023 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, and amending Directive (EU) 2017/1132, entered into force on 1 November 2023. The main objective of the Law is to prevent companies to be declared bankrupt by offering new measures to identify companies in financial difficulties (the “**debtor**” or the “**debtors**”), as well as to offer the debtors possibilities to reorganise, either amicably or judicially, their assets or activities.

The Law was eagerly awaited by practitioners as Luxembourg’s competitiveness in the company restructuring sector was in decline compared to other European countries whose legislation offered more modern restructuring options.

Prior to the Law, Luxembourg law offered restructuring procedures, but they were largely outdated and inadequate to contemporary market needs. The Law has repealed the composition with creditors (“*concordat*”), controlled management (“*gestion contrôlée*”) and suspension of payments (“*sursis de paiement*”) and replaced them with various measures, including the reorganisation procedure (amicable or judicial), aimed at preventing the bankruptcy of the debtor.

Preventive measures have therefore been put in place to identify companies in financial difficulties referred to by the Law (1) in order to provide them information on the reorganisation measures available to them (2), as well as conservatory measures by appointing a company conciliator (“*conciliateur d’entreprise*”) or a court agent (“*mandataire de justice*”) to assist the debtor in ensuring the continuity of the company (3). The debtor is given a choice between an amicable reorganisation (4) or a judicial reorganisation of its assets and/or activities (5). Finally, the Law has also amended the existing bankruptcy legislation (6).

1. Scope of the Law

The Law applies to the following debtors:

- > traders (“*commerçants*”) as referred to under article 1 of the Commercial Code;
- > commercial companies (listed in article 100-2 paragraph 1 of the amended law of 10 August 1915 on commercial companies);
- > special limited partnerships (article 100-2 paragraph 4 of the amended law of 10 August 1915 on commercial companies);
- > artisans (“*artisans*”); and
- > civil companies.

The Law does not apply to entities governed by special legislation, such as credit institutions, financial institutions, insurance and reinsurance companies, undertakings for collective investment, investment funds, venture capital investment companies, central counterparties, central securities depositories, pension funds, securitisation undertakings and companies practising as a lawyer.

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