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Luxembourg: Rescue procedures in insolvency

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Luxembourg

Phase:

Management

Type:

Rescue procedures in insolvency

Last modified: 18 June, 2021

Native name: Alternatives à la faillite - Code du Commerce

English name: Alternative to bankruptcy - Commercial code

Article

Concordat préventif de faillite/Scheme of composition with creditors and Sursis de paiement/Suspension of payments (Commercial code, articles 593 to 614); Labour code, article 414-4 (3); Gestion contrôlée /Controlled management (Loi du 27 mai 2016);

Description

Three main options exist in Luxembourg other than bankruptcy to govern restructuring: controlled management, suspension of payments, and a 'scheme of composition' with creditors to avoid bankruptcy.

- A scheme of composition (concordat préventif de faillite) is a protective measure that enables employers or commercial companies in financial difficulty to come to an arrangement with their creditors and to avoid being declared bankrupt. The scheme of composition must be accepted/approved by the court and the creditors. As is the case for a suspension of payments, seeking a composition is a long and complex procedure involving a large number of parties (tribunal, judge, creditors).
- By requesting to be placed under controlled management (mise sous gestion contrôlée), an employer who is temporarily in difficulty can avoid bankruptcy or an immediate cessation of business and also avoid the drawbacks of a suspension of payments or a scheme of composition with creditors. The employer places the management of his/her assets under the control of one or more administrators (commissaires) in order to restructure the business or sell the assets under the best possible conditions. However, this procedure is not used often in practice.
- The suspension of payments represents an alternative to bankruptcy. It enables an employer to deal with temporary financial difficulties by authorising him/her to suspend his payments to creditors for a given period of time. However, it does not rule out a declaration of bankruptcy in the event that the business meets the conditions for bankruptcy.

The employee representatives must be informed if the employer intends to opt for such options, in the framework of the general obligation to information and consult the staff delegation, as stipulated by [article L.414-4 \(3\) of the labour code](#), 'on the situation, structure and probable development of employment within the company as well as any anticipatory measures envisaged, in particular in the event of a threat to employment'.

Comments

A draft legislation (Projet de loi 6539 relative à la préservation des entreprises et portant modernisation du droit de la faillite), already introduced in 2013 and revised in 2018 with a new parliamentary rapporteur and amendments to the original draft text in March 2018 is still being discussed at the parliamentary committee level. As the draft legislation was newly introduced in parliament, the parliamentary committee is still waiting for the new assessment by the state council. As soon as it receives the assessment, the committee can continue its work on the draft text. The chamber of employees already welcomed the draft bill in its [latest assessment](#) but it asked for more protection for employees, as well as for preventive measures to be established.

It has been reported in the press that the number of bankruptcies in Luxembourg has been on the increase and stood at 1,195 in 2018.

Cost covered by

Not applicable









Involved actors other than national government

Employer organisation
Trade union
Works council

Thresholds

No, applicable in all circumstances

Sources

-  Guichet.lu (governmental website) - Alternatives to bankruptcy (English)
-  Guichet.lu (governmental website) - Alternatives à la faillite (French)
-  Loi du 27 mai 2016
-  Arrêté grand-ducal du 24 mai 1935 complétant la législation relative aux sursis de paiement, au concordat préventif de la faillite et à la faillite par l'institution du régime de la gestion contrôlée
-  Commercial code/Code du commerce
-  Civil code/Code civil
-  Labour code, article L. 414-4 (3)
-  Une progression alarmante des faillites (press article in French)

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Contact us

Eurofound, Wyattville Road, Loughlinstown, Co. Dublin, D18 KP65, Ireland

Phone: (00) 353 1 2043100

E-Mail: information@eurofound.europa.eu

Press: media@eurofound.europa.eu



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