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Inside Story: Luxembourg new bill of law

This month's Inside Story is brought to you by Christel Dumont (cdumont@opf-partners.com), OPF Partners, Luxembourg.

The Bill of Law 6539, filed on 1 February 2013, relating to the protection of undertakings and the modernisation of insolvency law, provides for measures to prevent financially distressed undertakings from being declared bankrupt should their financial problems be detected at an early stage.

The most noticeable provisions are:

Supervision of financially distressed undertakings

In order to identify a financially distressed undertaking, several types of data shall be collected i.e. data collected by the Central Balance Sheets Office (centrale des bilans), judgments, notifications of economic redundancies, debt owed to the Social Security Center or to tax administrations) and centralised by the Economic Situation Committee (comité de conjuncture) and a unit assessing the financially distressed undertaking (cellule d'évaluation des entreprises en difficultés "**CEvED**"), which shall be created by the law. The CEvED shall be in charge of analysing the data, informing the undertaking and asking the latter to provide information as to potential reorganisation measures.

Extra-judicial reorganisation by way of amicable settlement

The debtor may propose to one, several or all its creditors to amicably settle in order to restore the undertakings' finances or provide for its reorganisation.

Judicial reorganisation

The scope of judicial reorganisation proceedings shall be to protect, under the supervision of the judge, the continuity of all or part of the distressed undertaking's business activities.

This measure shall imply a suspension of payments, subject to certain conditions, to be requested by the debtor by means of an official request. This reorganisation could be carried out in various forms, i.e. by way of a collective agreement or a transfer under legal control. These provisions are directly inspired by Belgian law and would provide conservative measures to prevent financially distressed undertakings from automatically being declared bankrupt.

Apart from that, the Bill of Law provides some new measures and modifications of the commercial

code:

Bankruptcy receivers

The Bill tends to establish bankruptcy receivers as a profession and revives provisions of the Commercial Code. Lists of bankruptcy receivers shall hence be created and they could include non-lawyer bankruptcy receivers.

Administrative winding-up without liquidation

Such proceeding will be opened:

- with respect to (i) any commercial company in accordance with article 437 of the Commercial Code (i.e. which has ceased its payments), which does not have any employees and whose assets do not exceed a threshold determined by Grand-Ducal Decree; or (ii) any company in accordance with article 203 of the law of 10 August 1915 on commercial companies as amended, under the conditions stated above (Article 203 applies to companies pursuing activities against (i) criminal law, or (ii) Commercial Code provisions, or (iii) other laws covering commercial companies including the right of establishment);
- upon request of the State Prosecutor ; and
- by the relevant person of the Trade and Company Register within three days as of the reception of the order issued by the State Prosecutor.

Modifications of the Commercial Code

Amongst others:

- simplification of simple bankruptcy (banqueroute simple) and abrogation of fraudulent bankruptcy (banqueroute frauduleuse) to facilitate prosecution of traders acting in bad faith from neglecting a business to start a new one and simply escape with total impunity;
- amendment of article 495-1 regarding the action to bridge insufficient assets (action en comblement de passif). The notion of serious and blatant fault (faute grave et caractérisée) will be replaced by the notion of management fault having contributed to insufficient assets. The same notion will be used for the prohibition to carry out any business activity (interdiction de faire le commerce).

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