

# Luxembourg

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## Legislation

### 1 What legislation is applicable to bankruptcies and reorganisations?

In Luxembourg, insolvency regulation is governed by the following provisions:

- the Luxembourg Commercial Code (Code de Commerce) with articles 437 to 592 introduced by the law dated 2 July 1870 on bankruptcy procedure (faillite) (liquidation);
- the Law dated 10 August 1915, as amended, on commercial companies (the Company Act) which deals with voluntary liquidation hereinafter referred to as 'corporate procedures' and compulsory liquidation proceedings (involuntary liquidation), to which the provisions of bankruptcy are normally applied;
- the Luxembourg Civil Code;
- the Law dated 14 April 1886, as amended, on composition in order to avoid bankruptcy (concordat préventif de la faillite); and
- the Grand-Ducal Decree dated 24 May 1935 completing the regulation with respect to the reprieve from payment (sursis de paiement), the composition in order to avoid bankruptcy and the controlled management (gestion contrôlée), the second main proceedings used in Luxembourg and hereinafter called 'reorganisation'; however, this procedure is quite uncommon.

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## Excluded entities

### 2 What entities are excluded from bankruptcy proceedings and what legislation applies to them?

Public entities and individuals carrying out civil activities are excluded from bankruptcy proceedings.

The financial sector also has its own regulations:

- the Law dated 5 April 1993 on the financial sector as amended;
- the Law dated 30 March 1988 on Undertaking for Collective Investment; and
- the Law of 6 December 1991 on the Insurance and Reinsurance Sector as amended.

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## Secured lending and credit (immovables)

### 3 What are the principal types of security devices that are taken on immovable (real) property?

The principal type of security device on immovables is the mortgage (hypothèque) which allows the mortgagee the right to have the property sold upon default of the debtor and to use the proceeds of sale to repay the outstanding secured debt. The

mortgagee will receive priority payment of its debt.

Another principal security is the charge of the unpaid vendor (privilège du vendeur): the unpaid vendor of real estate is entitled to preferential payment out of the proceeds of the sale of real estate if its privilege has been registered at the Mortgage Registration Office.

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## Secured lending and credit (moveables)

### 4 What are the principal types of security devices that are taken on moveable (personal) property?

The principal types of security devices on moveables are pledges and right of retention of title (clause de réserve de propriété).

The pledge provides the creditor with a bailment or other deposit of personal property as security for a debt or obligation. The creditor is also allowed to have the assets sold upon default of the debtor subject to the court's authorisation and the creditor can use the proceeds of the sale to repay the outstanding secured debt. The debtor must transfer the possession of the asset so that the pledge can be constituted. For securities, the pledge requires neither a dispossession nor the court's authorisation to be enforceable.

The retention of title allows the creditor to keep the property of the asset until full payment and upon default of the debtor to recover the asset without having to compete with any other creditors and also without having to comply with the time limits imposed by insolvency proceedings.

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## Unsecured credit

### 5 What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

Before the commencement of insolvency proceedings and provided the debt is overdue, the creditor can seize immovables or moveables.

The seizure procedure must be completed before the bankruptcy procedure starts. If not, the seizure will be suspended automatically when the court decides to open the bankruptcy procedure (see question 14).

The process is quite ineffective because it has to be completed before the company goes into bankruptcy. Moreover, the sale of the assets will benefit all the creditors.

The seizure proceeding on immovables is quite complex, very formal and may be time-consuming.

Moveables are, however, relatively easy but can be time-consuming in the event of disputes by the debtor. Furthermore, writ of execution on a tenant's furniture (saisie-gagerie) can only be

used by the landlord and distraint (*saisie-conservatoire*) exists only for commercial debts.

Finally, no distinction is made between national and foreign creditors for the enforcement of special procedures.

### Courts

- 6 What courts are involved in the bankruptcy process? Are there restrictions on the matters that the courts may deal with?

The court with jurisdiction to declare bankruptcy is the commercial court of the domicile of the bankrupt person or of the registered office of the bankrupt company at the date of suspension of payments (*cessation des paiements*).

If there are disputes regarding debts which are relevant for the exclusive jurisdiction of another court, they will be transferred to that court, for example, the social court for employees or the administrative court for taxes.

### Voluntary liquidations

- 7 What are the requirements for a debtor to commence a voluntary liquidation of its business? What are the effects of the commencement of the liquidation?

The literal legal meaning of ‘voluntary liquidation’ refers to ‘corporate liquidation’, which will be considered in question 29. Bankruptcy can, however, be declared by the company itself (*l’aveu*), (voluntary basis).

Any tradesman (*commerçant*) that ceases payments must acknowledge this at the clerk’s office of the commercial court. Thus, any company that is unable to meet its commitments and is not given the benefit of reprieve of payment proceedings nor controlled management, must acknowledge this and provide a statement enumerating and evaluating all the assets and the liabilities of the business entity and its accountancy records to the clerk’s office.

The tradesman is relinquished from all assets and the court fixes the date of suspension of payments.

### Involuntary liquidations

- 8 What are the requirements for creditors to successfully place a debtor in involuntary liquidation? What are the effects of the commencement of the liquidation?

A sole type of involuntary liquidation exists in Luxembourg. This can only be issued at the application of the public prosecutor when the company pursues activities contrary to criminal law or contravenes the provisions of the commercial code or the laws governing commercial companies.

In Luxembourg, a creditor cannot place his or her debtor in involuntary liquidation. A creditor can only place a debtor in bankruptcy.

Bankruptcy may be requested by one or more creditors. The creditor must summons the debtor before the commercial court and request its bankruptcy. The creditor must provide proof that the conditions for bankruptcy are fulfilled. A tradesman or a company is bankrupt when, having a commercial object, they have ceased payments and are unable to meet their commitments and their credit is exhausted. The two conditions are cumulative.

### Voluntary reorganisations

- 9 What are the requirements for a debtor to commence a financial reorganisation? What are the effects of the commencement of the reorganisation?

This proceeding (*gestion contrôlée*) is governed by the Grand-Ducal Decree dated 24 May 1935.

When a tradesman is experiencing financial difficulties, he or she can ask for the benefit of the procedure of controlled management to reorganise its business or to realise its assets. The request must be given to the commercial court together with the justifying documents, the creditors’ list. The tradesman cannot ask for this procedure if the bankruptcy procedure has already started.

The court will examine the authenticity of the declared economical difficulties. If the court does not consider the economical difficulties to be genuine, the procedure will be rejected. The court can also validate the procedure. In this case, it will delegate a judge to prepare a report on the situation of the tradesman at a specified time and can appoint an expert to assist.

Following the court’s decision to accept the procedure, the tradesman cannot transfer any property or rights. Once the judge presents his report, the court can still reject the proceeding (*gestion contrôlée*) or place the tradesman under the control of one or more commissioners. The latter will control the management of the company and will plan a scheme of reorganisation regarding the debts of the company which shall be accepted by the majority in number and in sum of the creditors to be approved and ratified by the court.

The approval of the reorganisation scheme remains at the discretion of the court even if it has been accepted by the majority in number and in sum of the creditors, but when it is ratified by the court, the tradesman and the creditors are obligatory bound.

During the proceeding, the tradesman will not be allowed, without the commissioners’ authorisation, to transfer, mortgage his moveable or immovable goods, borrow, compromise and more generally, to do any acts of administration. In the event of infringement of this provision, the transaction will be void.

Regarding the complexity and the formalism of the proceeding, it is not the usual practice and the court very often rejects the petition of the tradesman.

### Involuntary reorganisations

- 10 What are the requirements for creditors to commence an involuntary reorganisation? What are the effects of the commencement of the reorganisation?

Creditors are not allowed to issue an involuntary reorganisation. They can only request the bankruptcy procedure (see question 8), or accept a scheme of the reorganisation in relation to the *gestion contrôlée* proceeding (see question 9).

### Mandatory commencement of insolvency proceedings

- 11 Are companies required to commence insolvency proceedings in particular circumstances (to avoid personal liability to directors and officers or otherwise)? In what circumstances must companies do so? If proceedings are not commenced, what liabilities can result?

With respect to the Luxembourg commercial code, the debtor is under a legal obligation to file for bankruptcy (*l’aveu*) within one month from the moment it is unable to pay its debts as they fall due with its available or immediately realisable assets and when its credit is exhausted.

Any company that is unable to meet its commitments and

is not given the benefit of reprieve of payment proceedings nor controlled management, must acknowledge this and provide a statement enumerating and evaluating all assets and liabilities of the business entity and its accountancy records to the clerk's office.

If the debtor (tradesman or director of a company) fails to file for insolvency within the time limit, they could be held liable in both criminal and civil law (see question 24) if the court considers that in not complying with their obligation, they have contributed to the bankruptcy.

### Doing business in reorganisations

**12** Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use of assets and to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

The assets are managed by one or more commissioners appointed by the court to assist and supervise the debtor's actions during the course of the judicial reorganisation. In principle, the debtor continues operating its business. Certain acts of management and disposal cannot be performed without the consent of the commissioner (e.g. creating a mortgage, borrowing money).

All ongoing contracts continue unless the commissioner and the court decide otherwise.

Creditors have no rights in this procedure apart from accepting or rejecting the reorganisation project (see question 9).

### Sale of assets

**13** In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor?

For reorganisations, no sale of specific assets is allowed outside of the sale fixed in the approved plan.

In bankruptcy, the trustee can, with the authorisation of the judge in charge or the bankruptcy, sell immovable or perishable assets of the company.

The other assets (non-perishable and moveable) have to be sold with the authorisation of the court which will determine the conditions of the sale following a report by the judge in charge of the bankruptcy and through a hearing of the debtor.

Pledge and mortgage creditors may sell the moveable assets pledged or the building during the procedure of liquidation but only after the trustee in bankruptcy has examined and accepted the debt. If the price obtained is higher than the claims due to those creditors, the excess benefits the insolvency proceeding as a whole.

There is no specific provision for the sale of the entire business of the debtor.

### Stays of proceedings and moratoria

**14** What prohibitions against the continuation of legal proceedings or the enforcement of claims by secured and unsecured creditors are imposed by legislation or court order in liquidations and reorganisations? In what circumstances may secured or unsecured creditors obtain relief from such prohibitions?

#### Liquidation

For bankruptcy, all proceedings of claims by unsecured (or without any special charges) creditors are closed automatically by the court's decision to start the liquidation procedure:

- interests and fines stop accruing;

- actions against the bankrupt are not allowed.

The trustee could continue the proceedings on its own but would be held accountable for those proceedings.

Moreover, the enforcement of judgments is also closed for unsecured creditors.

Regarding the proceedings for secured creditors with special charges, they are suspended until the closure of the claims verification.

#### Reorganisation

For the reorganisation, the continuation of legal proceedings or enforcement of claims by secured or unsecured creditors is suspended by the designation of the commissioner until the end of the controlled management procedure.

### Arbitration processes in bankruptcy

**15** How frequently are arbitration procedures used in insolvency proceedings? What limitations are there on the availability of arbitration procedures in insolvency cases? In insolvency proceedings, will the court allow arbitration proceedings to continue after an insolvency case is opened?

In Luxembourg, it is compulsory for insolvency proceedings to be opened by a decision of the court (commercial section).

Nevertheless, a case could occur where an agreement concluded between the bankrupt company and a third party provides for an arbitration provision. In that case, the court does allow arbitration proceedings to continue. The trustee is bound by this provision and shall continue the arbitration proceeding on behalf of the company. The solution would be the same should the trustee start a proceeding in relation to an agreement in which it is specified that the parties shall submit any dispute to arbitration.

### Set-off and netting

**16** To what extent are creditors able to exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

Despite the fact that the creditors can file a petition for bankruptcy (see question 8), they cannot intervene once bankruptcy proceedings are underway unless their credit is disputed when the bankruptcy is pronounced.

Luxembourg legislation and case law allows set-off for the creditors in bankruptcy proceedings or in a reorganisation:

- if the debt became liquid, recoverable before the judgment putting the debtor company into liquidation or into reorganisation and is not seriously disputed by the debtor, the creditor is able to exercise his right of set-off. These three conditions are cumulative; or
- if the debts (the debt towards the creditor and the one towards the company in liquidation or reorganisation) are directly connected to the same agreement.

### Intellectual property assets in insolvencies

**17** May the licensor or owner of the IP terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with an IP licensor or owner to continue to use the IP for the benefit of the estate?

The rule states that the agreements in progress concluded between the bankrupt company and a third party shall continue after the

opening of insolvency proceedings.

Therefore, the simple fact that an insolvency proceeding has been opened does not allow the third party to terminate the agreement without a breach of contract from the bankrupt company.

Often parties to an agreement provide for a provision that, in the event of the insolvency of one of the parties, will authorise the other to terminate the agreement without motivation or a notice period.

This type of provision is perfectly legal and opposable to the bankrupt company.

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### Post-filing credit

- 18** Does your country's insolvency system allow a debtor in liquidations or reorganisations to obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

Luxembourg law does not expressly prohibit the trustee, in its capacity as representative of the debtor in bankruptcy, to obtain secured or unsecured loans or credit. Nevertheless, as the bankruptcy trustee is not allowed to increase the debt during the bankruptcy procedure, it seems that he or she would not be allowed to take out a loan.

During reorganisation, a credit or loan could be granted only with the necessary approval of the commissioners. It also has to be included in the reorganisation plan.

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### Successful reorganisations

- 19** What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved?

The commissioners specifically establish the scheme for the project of reorganisation. The project has to respect all interests such as preferential ranking. The reorganisation scheme established by the commissioners is communicated to the creditors who in turn inform the clerk of the court of their approval or disapproval of the plan. If approved by the double majority in the amount of the creditors' rights and in the number of the creditors, it shall be ratified by the court. Different sums are paid to creditors at different times, taking into account the nature and the size of their debts (see question 9).

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### Expedited reorganisations

- 20** Do procedures exist for expedited reorganisations?

There are no specific provisions under Luxembourg law for expedited reorganisations.

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### Unsuccessful reorganisations

- 21** How is a proposed reorganisation defeated and what is the effect of the plan not being approved? What happens if there is default by the debtor in performing an approved plan?

If the reorganisation scheme is not approved either by the creditors or the court (see question 9), the court may acknowledge that the conditions of the bankruptcy are fulfilled, pronounce the bankruptcy and fix the date of the suspect period six months before the petition for controlled management.

If the debtor does not respect the reorganisation scheme, it can be placed into bankruptcy upon request of the creditors or on the motion of the debtor or the court.

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### Bankruptcy processes

- 22** During a bankruptcy case, what notices are given to creditors? What meetings are held? What committees are or can be formed? What powers or responsibilities do these committees have? May creditors initiate proceedings to pursue remedies against third parties?

Creditors are notified of the bankruptcy order by its publication in two local newspapers within three days of the bankruptcy judgement. They are informed of the timescale of the proceedings. In practice, they can also directly receive or request information from, or to, the trustee.

The bankruptcy judgment orders creditors to declare and prove their claims at the clerk's office of the Commercial Court within a period not exceeding 20 days from the date of the bankruptcy judgment. In practice, the creditors are allowed to declare their claims until the closure of the claims verification.

The bankruptcy trustee must send a recorded delivery letter of convenience with the date fixed by the court to discuss the dispute regarding the claim.

Finally, creditors are entitled to issue proceedings against third parties that could have performed specific or personal guarantees for the debtor.

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### Insolvency of corporate groups

- 23** In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be combined into one pool for distribution purposes?

Parent companies and subsidiaries are separate entities with independent insolvency proceedings and cannot be combined.

Each company will dispose of its own assets and liabilities and a creditor of one company can only be paid with the assets of his debtor and not the assets of the group.

There is one exception to this rule: if the court decides that the parent company is two separate legal entities but there is a confusion of their assets.

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### Modifying creditors' rights

- 24** May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

The court must comply with the provisions of the law dealing with the creditor's rank and is therefore unable to change the rank of the creditor's claim.

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### Enforcement of estates' rights

- 25** If the insolvency administrator is without assets to pursue a claim that is available to the estate, are there procedures by which the creditors can pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

This question is not relevant in Luxembourg as the judicial costs engaged by the trustee will be borne by the administration.

In practice, before starting a proceeding, the trustee will always request the authorisation of the judge supervising the bankruptcy proceeding.

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**Claims and appeals**

- 26** How is a creditor's claim submitted and what are the applicable time limits? How are claims disallowed and how does a creditor appeal a disallowance? Are there any provisions that deal with the purchase, sale or transfer of claims against the debtor?

The judgment fixes a closing date for the verification of claims before the judge in charge of the bankruptcy and also fixes a court date to discuss any dispute concerning the claim (see question 19).

If a claim is rejected, the creditor may appeal against the court's decision in the usual way.

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**Priority claims**

- 27** What are the major governmental and non-governmental privileged and priority claims in liquidations and reorganisations? Which priority and privileged claims have priority over secured creditors?

The fees and expenses incurred by the bankruptcy trustee or by the commissioner due to the reorganisation are paid first, then the priorities in liquidation and reorganisation are determined by several laws as follows:

- super-privileged salaries (last six months' wages with a maximum of six times the minimal social salary);
- employees' contribution to social security (from salary);
- taxes;
- employer's contribution to social security;
- lessor and pledgor and special secured debts; and
- unsecured debts.

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**Liabilities that survive insolvency**

- 28** Do any liabilities of a debtor survive insolvency so that they are enforceable against the debtor after it has reorganised or against a purchaser of the debtor's assets in an insolvency?

If a reorganisation is in progress, the reorganisation is considered complete when the scheme established by the commissioners has been carried out in its entirety.

Accordingly, no liability should survive after the reorganisation.

If the commissioners are not able to abide by the terms of the scheme, the company will be declared bankrupt and the creditors will not be paid.

In that case, creditors would be treated as if the company had never been in reorganisation and could file a petition for bankruptcy for the initial amount of the debt. Creditors will not be bound by the amount settled according to the scheme.

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**Distributions**

- 29** How and when are distributions made to creditors in liquidations and reorganisations?

The trustees may pay the creditors in accordance with legal provisions and in line with the rank of privileges and charges after deduction of the trustee's fees and the administration costs of the bankruptcy.

For the reorganisation, distributions are made in respect of the reorganisation's scheme if validated by the court.

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**Transactions that may be annulled**

- 30** What types of transactions can be annulled or set aside in bankruptcies and what are the grounds? What is the result of a transaction being annulled?

All payments made after the judgment opening the bankruptcy procedure are void. The trustees can require the creditor to reimburse any received money or assets.

All transactions performed in bad faith from the date of the suspension of the payments can be cancelled if the creditors were informed of the suspension of payments.

All acts or payments made in fraud are cancelled, whatever the date on which they took place.

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**Proceedings to annul transactions**

- 31** Does your country use the concept of a 'suspect period' in determining whether a transaction by an insolvent debtor can be annulled? May voidable transactions be attacked by secured creditors or by unsecured creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or suspension of payments or only in a liquidation?

Transactions can be void or voidable if they are performed in the suspect period with disproportionate prices or if the creditor knew about the bankruptcy of the debtor.

The court defines the suspect period from the date of the suspension of payment to the date of the bankruptcy judgment (not exceeding six months).

Only the trustee can engage the proceedings to cancel some transactions. The decisions can also be attacked within the reorganisation framework as the law provides that the decision of the court delegating one of its judges involves the prohibition to cancel, constitute pledges, to mortgage, to commit or to receive a moveable asset without the written authorisation of the judge in charge of the bankruptcy.

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**Directors and officers**

- 32** Are corporate officers and directors liable for or can they be made to pay obligations owed by their corporations?

**Corporate liability**

The responsibilities of directors or the de facto directors are stipulated in the Company Act.

The directors shall be liable to the company for the execution of the mandate provided and for any misconduct in the management of the company's affairs. Breach of the mandate by the directors of the company incurs the payment of damages. The directors shall be jointly and severally liable towards the company and any third parties for damages resulting from non-compliance with the Company Act or the articles of association of the company.

Only the trustee is entitled to act on the basis of the *actio mandati* (representing the company) or on the basis of the common law representing the creditors.

**Extension of the company bankruptcy to the directors**

The bankruptcy may also be extended to the person managing the business (directors or officers) to the extent that the latter is a tradesman, where payments cease for less than six months following the judgment declaring the bankruptcy.

**Action to bridge the insufficiency in assets**

If there are insufficient assets, the Luxembourg Commercial Court can decide on a motion from the trustee that any shortfall in company assets is made up from the personal assets of the directors

if any of the directors have committed a 'serious and blatant offence'. It must also be proved that the particular director has contributed to the bankruptcy. The court, if so requested by the trustee, might find against the director (whether appointed or in fact, public or undisclosed, paid or not) to contribute, wholly or partially, jointly or severally, to cover the deficit, on the basis that his or her serious misconduct has led to the company's bankruptcy. It is the so-called *action en complément de passif* (action to bridge the insufficiency in assets).

#### Wrongful bankruptcy and fraudulent bankruptcy

Luxembourg law distinguishes between these two kinds of bankruptcy in the event of a personal bankruptcy, where the directors are held liable for those acts set out in the law. A bankrupt can be pursued in court both as a *banqueroutier simple* (wrongful bankruptcy) and as a *banqueroutier frauduleux* (fraudulent bankruptcy), at the same time.

Both acts are considered criminal but the former is considered less serious than the latter. The reasoning behind having two procedures like this is that the insolvency proceedings protect creditors, whereas the fraudulent bankruptcy proceedings protect the public good moral conduct (*moralité publique*). The *banqueroute* actions must be thought of as separate public actions that have little to do with any decision that has been made in civil proceedings.

#### Ban on trading

A director may be prevented from holding different offices if he or she has contributed to a serious and blatant offence during the winding-up of the company.

#### Duties of directors to creditors prior to bankruptcy

**33** Do corporate directors and officers have any liability for pre-bankruptcy actions by their companies? Can they be made subject to sanctions or penalties for other reasons?

The 'suspect period' is the period whereby the court will determine the date of the beginning of the insolvency period. The consequences of the fixing of such a date are that certain acts will be void and will not have an effect. They are any transactions roughly equivalent to gratuitous alienations or fraudulent preferences. For example, any payments in cash, any sale or compensation not for a valid consideration will be void. The law here aims to prevent a director from alienating or donating the company's assets to the prejudice of its creditors. During this period, the conduct of directors will be investigated by the trustee and, if necessary, reported to the public prosecutor. Consequently, each decision taken by the directors has to be carefully considered. Once the director is aware that the company is in financial difficulties and insolvency seems unavoidable, his or her duties will include the taking of professional advice on the matter. This may give a director some protection against any allegation of wrongful trading by a trustee. Directors must, in particular, take positive action to mitigate the consequences for the company's creditors and to reduce as far as possible the potential loss.

#### Creditors' enforcement

**34** Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

There is no process under Luxembourg law by which some assets can be seized outside of court proceedings.

#### Corporate procedures

**35** Are there corporate procedures for the liquidation or dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

A voluntary winding-up can only take place for commercial companies and not tradesmen (*commerçant*). The decision is taken by an extraordinary general meeting of shareholders with a qualified majority applying for the change of by-laws. Following the decision to dissolve the company, one or more liquidators must be appointed to manage the liquidation of the company. The company will be deemed to continue to exist for liquidation purposes only.

As from the date of the decision to dissolve the company, all creditors are entitled to equal treatment, meaning they will receive payment of the entire amount of their debts on a pro rata basis, unless their debt is secured. If the liquidator acknowledges that he or she shall not have sufficient assets for paying all the debts, he or she must file a petition for bankruptcy.

#### Conclusion of case

**36** How are liquidation and reorganisation cases formally concluded?

The trustees sell the immovable and moveable goods and liquidate the liabilities under the supervision of the judge in charge or the bankruptcy.

The bankruptcy procedure can be closed in the following circumstances:

- possible closure of the procedure due to an insufficient mass of assets to cover administration and liquidation costs of the bankruptcy. Here, the creditors reclaim their right to sue the insolvent tradesman;
- if apparent that the assets will be sufficient, a composition after the bankruptcy procedure may be set up. This procedure is quite uncommon; or
- relating to the legal winding-up of the company, where no arrangement is possible.

An application is filed with the Commercial Court for the termination of bankruptcy proceedings once all funds have been paid. In support of their application, evidence is required that all payments they were bound to make were used. The court will declare the bankruptcy closed by ordering the winding-up of the company.

#### UNCITRAL Model Law

**37** Is the adoption of the UNCITRAL Model Law on Cross-Border Insolvency under consideration in your country? If so, what is the present status of this consideration?

There are currently no plans to adopt the UNCITRAL Model Law on Cross-Border Insolvency into Luxembourg law.

#### International cases

**38** What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

National and foreign creditors are treated under the same procedure. Luxembourg law does, however, take into account the difficulty of foreign creditors and allows the court to extend the period for declaring the debt.

Foreign judgments are recognised without any formality. The effects are the same as in the original country and thus as at the date fixed by the foreign judgment.

In the EU, Council Regulation (1346/2000) on insolvency proceedings applies. This Regulation sets out harmonised rules on conflict of laws and jurisdiction applying to intra-EU collective insolvency proceedings and replaces national rules on conflict of laws and treaties entered by two or more member states.

#### Cross-border insolvency protocols and joint court hearings

**39** In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

There are no official cross-border insolvency protocols or joint court hearings. Some cooperation with foreign courts or insolvency practitioners may exist.

#### Pending legislation

**40** Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

No bill is under discussion before the Houses of Parliament, despite the fact that the Public Research Centre, Gabriel Lippman presented a preliminary draft law in 2000.

#### Developments under the EU Regulation on Insolvency Proceedings

**41** Please comment, if applicable, on any significant developments or recent decisions in your country involving the EU Regulation on Insolvency Proceedings.

Council Regulation 1346/2000 dated 29 May 2000 came into force in Luxembourg on 31 May 2002.

In accordance with this Regulation, Luxembourg jurisdictions have given several decisions:

- with regard to article 3.1 of the Regulation, Luxembourg jurisdictions have already deemed that for the purpose of putting a company into insolvency proceedings, the centre of the principal interests could be in Luxembourg, even if the registered office of the company is located in another country. To take these decisions, however, the Luxembourg

jurisdictions have always considered that the registered office located in another country was fictitious;

- Luxembourg jurisdictions have also applied article 27 of the Regulation dealing with secondary proceedings to put branch offices into insolvency proceedings without examining if the conditions for this branch were fulfilled insofar as a principal proceeding was opened against the company in the country of its registered office; and
- Luxembourg jurisdictions recognise without any difficulties the principal proceeding opened in another member state according to article 16.1 of the Regulation.

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