A NEW PROCEDURE FOR ADMINISTRATIVE DISSOLUTION WITHOUT LIQUIDATION

On 1 February 2023, the law of 28 October 2022 creating the administrative dissolution procedure without liquidation, published on 4 November 2022 in the Official Journal, came into effect.

Official statistics do not yet reflect an immediate application of the new law during the first month in which it took effect, which is to be expected as collation of statistics may lag behind.[1]

The goal of this new procedure is to allow for a relatively swift and simple administrative dissolution of a company which meets the following three cumulative conditions (the "**Criteria**"):

- it engages in activities contrary to criminal law, or seriously violates the provisions of the Commercial Code, or the laws governing commercial companies (e.g. lack of registered office, resignation of all board members without replacement, failure to file annual accounts, etc.), including establishment law;
- it has no employees; and
- it has no assets.

The new procedure avoids the need to follow a formal judicial liquidation procedure as provided for in article 1200-1 of the law of 10 August 1915 on commercial companies, which is a relatively lengthy procedure that involves the appointment of a judicial commissioner and one or more liquidators.

In other words, administrative dissolution without liquidation is an administrative measure, allowing for the acceleration of the removal of "shell" or "empty" companies from the

Luxembourg Trade and Companies Register ("**RCS**") at a reduced cost to the state, instead of applying the abovementioned complicated judicial measure.

Civil companies as well as certain banks, insurances, funds, and commercial companies formed by lawyers for their legal practice (and registered with the list V of the Luxembourg Bar) cannot, however, rely on this new procedure.

The new procedure is at the initiative of the public prosecutor, who receives information on companies from the RCS, the national statistical institute and public authorities. If the public prosecutor thinks that there are precise and consistent indications that a given company meets the Criteria, then he or she can formally instruct the manager of the RCS to begin the administrative dissolution without liquidation procedure. Hence, although the procedure is initiated by the public prosecutor's office, it is actually handled by the manager of the RCS.

The RCS manager notifies the decision to commence the administrative dissolution without liquidation procedure by sending a registered letter with acknowledgement of receipt addressed to the company's registered office (as it appears in the RCS), and it publishes the decision in two newspapers edited in Luxembourg, as well as in the Luxembourg official gazette (RESA).

From the date of those publications, the managers/directors of the company in question are no longer in charge. For its part, the RCS manager begins verifications on the actual absence of employees and assets, by collecting information from banks, insurance companies, mortgage offices, the land registry, the National Automobile Circulation Society (SNCA) and the Social Security Common Centre.

On completion of the verification stage, the RCS manager informs the public prosecutor of the results of its checks. If the Criteria are fulfilled, the public prosecutor asks the RCS manager to continue with the administrative dissolution without liquidation procedure; if they are not fulfilled, then the public prosecutor asks the RCS manager to cease the procedure and then publish this decision in the RESA.

The RCS manager somewhat plays the role of the liquidator in a classic judicial liquidation, except that the procedure is faster and there are no assets to be sold in order to pay any liabilities. The law provides that the administrative dissolution procedure must be completed no later than six months after the publication of the decision to commence it. A publication that the procedure has completed entails the formal dissolution of the company.

However, a company to which the decision to open an administrative dissolution without liquidation procedure is addressed, as well as all concerned third parties (e.g. the creditors of the company) who think that the Criteria are not fulfilled, have a period of one month following publication of the decision to commence the procedure in the RESA to file an appeal against the decision by seizing the competent District Court, sitting in commercial matters. The action is brought in the court and judged in summary proceedings.

It is therefore, more than ever, in the interest of all directors/managers and shareholders to make sure that their company respects the fundamental legal obligations and benefits of an unchallenged domiciliation contract, files its annual accounts, etc.

[1] **Update on 21 August 2023 - Since the beginning of June 2023, 120 companies have disappeared from the Commercial register under the new administrative dissolution without liquidation procedure.**