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Practical cross-border insights into restructuring & insolvency law

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1 Overview

1.1 Where would you place your jurisdiction on the spectrum of debtor- to creditor-friendly jurisdictions?

Albeit not due to its restructuring and insolvency laws, Luxembourg is generally considered a creditor-friendly jurisdiction due to the very wide implementation of the Directive 2002/47/EC on financial collateral arrangements.

The Luxembourg Collateral Law of 2005, as amended (the **Collateral Law**) covers pledges and assignments of financial instruments and receivables. As any security under the Collateral Law is considered "bankruptcy proof", such security has become a very popular option for creditors, both in regular financings and in a distressed or restructuring scenario.

By way of illustration, Luxembourg share pledge enforcements are frequently used to take control of a group (so-called "single point of enforcement") but also to allow for a "pre-pack" – like process to be implemented in a restructuring scenario – an approach which has been used in high-profile restructuring cases even as part of a foreign restructuring process, such as a scheme of arrangement or a US Chapter 11.

1.2 Does the legislative framework in your jurisdiction allow for informal work-outs, as well as formal restructuring and insolvency proceedings, and to what extent are each of these used in practice?

Unfortunately, Luxembourg law has no express framework for informal out-of-court restructurings. Nothing, however, prevents a company from seeking contractual arrangements with its creditors to the same effect. Most informal work-outs involving Luxembourg entities (which are part of a global group) or instruments are governed by foreign law.

A formal financial reorganisation can be carried out in Luxembourg through the suspension of payments (*sursis de paiement*), controlled management (*gestion contrôlée*) or composition with creditors (*concordat préventif de faillite*). However, these proceedings tend to be lengthy and costly and lack the desired flexibility and predictability – as a result, they are very rarely used in practice by Luxembourg commercial (non-regulated) companies.

Note further that none of the above rescue proceedings will affect the rights of a secured creditor benefitting from a security under the Collateral Law.

The most common proceedings initiated in Luxembourg are bankruptcy proceedings (*faillite*) which aim at winding-up the debtor's assets in the best interest of the bankruptcy estate and its creditors.

A company can also be subject to compulsory liquidation, which may be ordered by a court on the application of the state prosecutor where the company has pursued illegal activities or has seriously infringed any laws applicable to commercial companies generally.

Additionally, further to the new administrative dissolution without liquidation procedure, certain companies can be dissolved through an administrative proceeding without resorting to a formal judicial dissolution and liquidation, when the three following cumulative conditions are met:

- the company must be a commercial company which pursues illegal activities or has seriously infringed any laws applicable to commercial companies generally;
- the company has no employees; and
- the company has no assets.

Certain companies, such as entities subject to prudential supervision, are outside the scope of this procedure. Only the state prosecutor can request the Luxembourg Register of Commerce and Companies to open the procedure, based on clear and concordant indications that the company meets the above conditions.

2 Key Issues to Consider When the Company is in Financial Difficulties

2.1 What duties and potential liabilities should the directors/managers have regard to when managing a company in financial difficulties? Is there a specific point at which a company must enter a restructuring or insolvency process?

When managing a distressed debtor, its board of directors must ensure that they keep informed of the financial status and evolving situation of the company, including its restructuring or liquidation options and the enforcement risks. Directors

should ensure that these topics are discussed during regular and frequent board meetings.

The decision making and discussion process should be carefully recorded in the board minutes or other formal means to demonstrate, should the company plunge into bankruptcy at a later stage, that the directors/managers acted prudently, diligently, and loyally towards the company as a whole. Evidence in board minutes of the discussions and strategic approach taken, even if risky, are the best protection directors can have against claims from the bankruptcy receiver or a third party.

Directors of a Luxembourg company must file for bankruptcy within one month of the cessation of payment, bearing in mind that the actual insolvency test in Luxembourg is cumulative and entails the company being in cessation of payments, but also having lost its creditworthiness (i.e., not being able to obtain credit, maturity extensions, etc).

A board of directors can be held liable under Luxembourg law, among other things, for:

- the non-execution of their mandate;
- any misconduct in the management of the company's affairs; and
- any damages caused by their fault or negligence (liability based in tort (*responsabilité délictuelle*) under article 1382 of the Luxembourg Civil code).

Furthermore, not filing for bankruptcy within the statutory timeframe constitutes a serious misconduct, which can lead the court to impose civil or criminal liability on the board of directors and order the latter to bear all or part of the debts of the company.

2.2 Which other stakeholders may influence the company's situation? Are there any restrictions on the action that they can take against the company? For example, are there any special rules or regimes which apply to particular types of unsecured creditor (such as landlords, employees or creditors with retention of title arrangements) applicable to the laws of your jurisdiction? Are moratoria and stays on enforcement available?

In bankruptcy proceedings, the court assesses at its sole discretion whether the conditions for bankruptcy are met and, if so, appoints a bankruptcy receiver to liquidate the assets, under the supervision of a supervisory judge.

In principle, creditors and shareholders have no say or control over the procedure or decisions made. The receiver may or may not, at its discretion, consult the creditors or shareholders as part of the liquidation.

While the concept of credit bidding does not exist under Luxembourg law, creditors can propose to purchase certain assets from the bankruptcy estate and the receiver may indeed decide to launch such process. There is, however, no obligation on the part of the receiver to act upon creditors' demands or proposals.

Once insolvency or bankruptcy proceedings are opened, a stay is imposed on creditors who can no longer enforce their rights against the bankrupt company individually. This stay only has territorial effect unless a specific regulation extends its effects, such as Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (**EU Insolvency Regulation**).

Bankruptcy remote secured creditors, such as mortgagees or beneficiaries of a security under the Collateral Law, can continue to enforce their rights irrespective of the opening of proceedings.

The rights of unsecured and secured creditors (other than mortgagees and beneficiaries of a security under the Collateral Law) are in principle limited to their share of the proceeds from the realisation of the debtor's assets based on the distribution priority. Employees, tax and social security authorities are, however, super-privileged creditors in a bankruptcy scenario.

Also, a reservation of title clause allows an unpaid seller to retain title to the sold assets (non-fungible movable assets) until the purchaser has paid the full purchase price. In the same vein, a retention right provides a creditor with the right to keep goods for as long as its due and payable claim regarding such goods is outstanding. A retention right is only effective if the creditor has actual possession of the goods.

2.3 In what circumstances are transactions entered into by a company in financial difficulties at risk of challenge? What remedies are available?

A debtor's pre-insolvency transactions can be affected by bankruptcy proceedings if they were concluded during the claw-back period. The court will determine the date on which it deems the cessation of payments to have occurred and then determine the length of the claw-back period, which cannot be longer than six months from the bankruptcy judgment.

Certain payments made, as well as other transactions concluded or performed, during the claw-back period can then be subject to cancellation by the court (if requested by the receiver). The following transactions may be set aside or declared null and void upon request by the receiver:

- contracts entered into by the debtor, if its own obligations are significantly more onerous than the obligations of the other party;
- the payment of debts that have not fallen due;
- any payment made in kind (e.g., asset transfer) by the debtor in respect of debts that are due (excluding cash and negotiable instruments);
- the granting of a security interest for antecedent debts (i.e., for past consideration); and
- the payment of certain debts that have fallen due, but that arose during the claw-back period (or the 10 days preceding it).

Additionally, certain payments made for matured debts, as well as other transactions concluded for consideration, during the claw-back period, are subject to cancellation by the court if they were concluded with the counterparty's knowledge that the debtor was insolvent at the time.

Financial collateral arrangements which fall within the Collateral Law are valid and effective against the receiver, even if they have been entered into or amended during the claw-back period, as these are "bankruptcy remote".

Finally, the receiver may, without any limitation in time, challenge any transaction or payment made in fraud of the creditors' rights.

3 Restructuring Options

3.1 Is it possible to implement an informal work-out in your jurisdiction?

Luxembourg does not expressly provide for an informal out-of-court restructuring framework and has, in this respect, not (yet) followed the European trend to implement more effective and flexible recovery proceedings based on UK schemes of arrangement, (pre-pack) administrations and/or US Chapter 11 proceedings.

A company can, however, seek to conclude contractual arrangements with its creditors to the same effect. Most informal workouts involving Luxembourg entities or instruments are therefore governed by foreign law.

3.2 What informal rescue procedures are available in your jurisdiction to restructure the liabilities of distressed companies?

Luxembourg does not expressly provide for an informal out-of-court restructuring framework.

In Luxembourg, a formal debt reorganisation can be carried out either through a suspension of payments (*sursis de paiements*), a controlled management (*gestion contrôlée*) or a composition with creditors (*concordat préventif de la faillite*).

These proceedings tend to be lengthy, costly and lack the desired level of flexibility and predictability, and consequently are very rarely used in practice for commercial (non-regulated) companies.

As a result of these shortcomings, in cases of international debt restructurings involving a Luxembourg component (such as Luxembourg holding or debt issuing companies), the use of popular foreign restructuring proceedings, such as U.S. Chapter 11 and other DIP proceedings has increased over the years.

- **Suspension of payments (*sursis de paiement*)**
  Initiated by the debtor, this procedure allows a commercial company who faces temporary liquidity difficulties to apply for a suspension of payments until its financial liabilities can be met. The court can grant a temporary stay, either immediately or at a later stage of the procedure. Specific suspension of payments procedures apply to regulated companies in the insurance and financial sectors.
- **Controlled management (*gestion contrôlée*)**
  A commercial company can apply for controlled management to either reorganise and restructure its debts and business or to realise its assets in the best interest of creditors.
- **Composition with creditors (*concordat préventif de faillite*)**
  This procedure aims at avoiding bankruptcy. It allows a debtor facing financial difficulties (but not yet meeting the criteria for insolvency) to negotiate a settlement or a rescheduling of its debts with its creditors, which must be approved by the district court to avoid bankruptcy proceedings. The court will not ratify the application if the legal provisions are not met or for reasons of public interest or the interest of creditors. If the court deems that the conditions are not met, it will declare the company bankrupt.

3.3 Are debt-for-equity swaps and pre-packaged sales possible? In the case of a pre-packaged sale, are there any restrictions on the involvement of connected persons?

Debt-for-equity swaps are possible but not provided by law. Furthermore, the assets of a bankrupt debtor may be sold only with the prior consent of the relevant practitioner (e.g., the receiver) and/or the court; and assets which are subject to a lien may be sold or disposed of only with the beneficiaries' consent.

In practice, in the context of an international restructuring, creditors often make use of a consensual enforcement of a Luxembourg financial collateral security to allow for a "clean" transfer of the business to the creditor group and thereby arrange for a "pre-packaged" sale.

3.4 To what extent can creditors and/or shareholders block such procedures or threaten action (including enforcement of security) to seek an advantage? Do your procedures allow you to cram-down dissenting stakeholders? Can you cram-down dissenting classes of stakeholder?

Suspension of payments (*sursis de paiement*)
In principle, creditors cannot enforce their rights once the suspension of payment is granted by the court. However, enforcement procedures imitated beforehand are not affected. In addition, the suspension does not apply to tax or other public charges, as well as certain privileged claims or certain secured creditors (in particular, mortgagees or security takers under the Collateral Law).

The suspension of payments requires the consent of a majority of creditors representing 75% of the debtor's liabilities and the approval of the Superior Court of Justice.

Controlled management (*gestion contrôlée*)
Unsecured and secured creditors cannot enforce their rights, privileges or pledges (other than security takers under the Collateral Law) after the appointment of the delegate judge.

More than 50% of the creditors (in number) representing more than 50% in value of the debtor's debts must approve the plan, which must in turn be approved by the court. Any reorganisation plan must consider all interests at stake and comply with the ranking of privileges and mortgages. The approved reorganisation plan will consequently be binding on all creditors, including dissenting creditors, and creditors that abstain from voting are deemed to have consented.

Composition with creditors (*concordat préventif de faillite*)
During the composition procedure, there is an automatic stay on enforcement actions initiated against the debtor. The procedure tends to be very unattractive for debtors as only unsecured creditors and secured creditors who waived their rights (or voted in favour of the composition) are bound by the proposals.

A successful application requires the consent of a majority of creditors representing 75% of the outstanding debt. The approval of the composition has no effect on creditors who did not participate in the composition proceedings. These creditors can continue to act against the debtor to obtain payment of their claims and can enforce their rights, obtain attachments, and obtain the sale of the assets securing their claims.

All these procedures do not allow for the flexibility and swiftness that is required in international debt restructurings so that they are very rarely used. Their limited cram down mechanics makes them very difficult to use effectively. This is likely to change with the implementation of the EU Restructuring Directive into Luxembourg law which likely to take time despite the deadline having been missed.

3.5 What are the criteria for entry into each restructuring procedure?

A suspension of payments will be granted by the relevant court only if (i) the debtor's temporary financial difficulties are due to extraordinary and unexpected circumstances, and (ii) the debtor has sufficient means to pay off all its creditors or the debtor is in a situation where re-establishment of a proper balance between its assets and liabilities appears likely.

To be eligible for controlled management, the debtor must be acting in good faith and must demonstrate that: (i) its creditworthiness is impaired; (ii) it is facing difficulties in meeting all its commitments; and (iii) its creditors are contemplating enforcement proceedings.

To be eligible for a composition with creditors, the debtor must be unable to meet its engagements or have lost all creditworthiness. In addition, the applicant must be deemed unfortunate and acting in good faith (*débiteur malheureux et de bonne foi*) as determined by the court at its discretion.

3.6 Who manages each process? Is there any court involvement?

Formal insolvency proceedings (whether bankruptcy or a restructuring proceeding) are all heavily court-led in Luxembourg. Debtors and creditors will in principle only have very limited intervention rights or influence on the process.

In particular, during a suspension of payments, the court will appoint one or more commissioners (*commissaires*) to supervise the management of the company during the suspension of payment period.

In a controlled management procedure, the court will appoint a delegate judge (*juge-délégué*) to report on the business situation of the debtor. If, based on this report, the application is accepted by the court, it appoints one or more commissioners to control the management of the company and prepare a reorganisation or liquidation plan. The company can regain control over its business if the plan is approved by the creditors. If the court deems that the conditions are not met, it declares the company bankrupt.

In a composition with creditors, the court appoints a delegate judge to verity the situation of the debtor and make a report on the debtor's situation. Based on that report, the court decides whether to continue the procedure or declare the applicant bankrupt. If the court decides that the procedure should continue to composition, the delegate judgment presides over the creditors' meetings and supervises the composition procedure.

3.7 What impact does each restructuring procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? What protections are there for those who are forced to perform their outstanding obligations? Will termination and set-off provisions be upheld?

Restructuring proceedings under Luxembourg law do not specifically provide for contracts to be set aside or repudiated by the debtor without the counterparties' consent. There is no equivalent to the company voluntary arrangement in the United Kingdom, for instance.

During a suspension of payments, the debtor cannot, without the commissioners' prior approval, dispose of its assets or take any actions, including granting mortgages, making payments, borrowing money, or receiving funds.

Once placed under controlled management, the debtor cannot, without the court appointed commissioners' prior approval and under penalty of nullity, dispose of its assets or take any actions, including granting mortgages, making commitments or payments, borrowing money or receiving funds. The commissioners can also compel the company to perform a given action.

During the composition proceedings and up to the date of the ratification of the composition, the debtor cannot dispose of its assets, grant mortgages or make any commitments without the authorisation of the delegate judge. Once the plan is adopted, the debtor must act within the timeframe of the latter.

Within the scope of the restructuring proceedings, employment contracts will generally remain in place and the restructuring should have no effect on employees of the debtor.

3.8 How is each restructuring process funded? Is any protection given to rescue financing?

Luxembourg law does not have any statutory provisions dealing specifically with new money financing. However, a bankruptcy receiver would normally be bound by the contractual agreements in place, including the ranking of any new financing arrangements so that gives some comfort to the new money lenders.

4 Insolvency Procedures

4.1 What is/are the key insolvency procedure(s) available to wind up a company?

Bankruptcy proceedings are the most common proceedings filed against commercial companies in Luxembourg. These proceedings aim at winding-up a company's assets in the best interests of the bankruptcy estate and its creditors.

Specific insolvency regimes apply, in particular, to entities of the regulated financial and insurance sectors as well as to securitisation entities. A special civil bankruptcy regime is applicable to private persons under the law on over-indebtedness of 8 January 2013.

Where a company has pursued illegal activities or has seriously infringed any laws applicable to commercial companies generally, it may become subject to a compulsory liquidation ordered by a court on the application of the state prosecutor. If the said (commercial) company has no employee and no assets, the state prosecutor can also request the Luxembourg trade and companies register to open a procedure for its administrative dissolution without liquidation, further to which the company will be dissolved without resorting to formal dissolution and liquidation (see also question 1.2. above).

4.2 On what grounds can a company be placed into each winding up procedure?

A commercial entity is bankrupt when it has both:

- ceased payments and is unable to meet its commitments (*cessation des paiements*), that is, the company cannot, or does not, fully pay its due, certain and liquid debts as they fall due; and
- lost its creditworthiness (*ébranlement de crédit*), that is, the company is unable to obtain new credit or extensions from any source.

The directors/managers of a Luxembourg company have a statutory obligation to file for bankruptcy within one month of the cessation of payments and directors/managers may incur both criminal and civil liability if they fail to file within the set timeframe.

4.3 Who manages each winding up process? Is there any court involvement?

Once a bankruptcy procedure is opened, the directors/managers are removed from their functions and a bankruptcy receiver (*curateur*) is appointed by the court. The receiver is responsible for realising the debtor's assets and distributing the proceeds to the creditors, under the supervision of a supervisory judge

(*juge-commissaire*). Creditors have no control over the procedure and the appointment of the receiver or its actions. The receiver, together with the supervisory judge, decides how to liquidate the assets of the bankruptcy estate.

In practice, bankruptcy proceedings tend to last a significant amount of time, ranging from a couple to many years. As Luxembourg law does not provide for a set timeframe for completion, the timeframe notably depends on the complexities of the bankruptcy and the efficiency of the receiver on a case-by-case basis.

4.4 How are the creditors and/or shareholders able to influence each winding up process? Are there any restrictions on the action that they can take (including the enforcement of security)?

Creditors and/shareholders have no control over the proceedings or over the receiver's actions. The receiver may or may not, at its discretion, consult the creditors or shareholders as part of the liquidation and has very extensive powers in deciding how to conduct the liquidation.

Individual legal actions by privileged and unsecured creditors against the debtor are suspended once the company has been declared bankrupt for the entire duration of the bankruptcy. Creditors must file a proof of claim (*déclaration de créances*) with the court. That said, "bankruptcy proof" secured creditors (such as mortgagees or beneficiaries of a security under the Collateral Law) can freely take any enforcement action regardless of the bankruptcy proceedings.

4.5 What impact does each winding up procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? Will termination and set-off provisions be upheld?

In principle, contracts of a bankrupt company are not automatically terminated upon commencement of bankruptcy proceedings, save for *intuitu personae* agreements (such as proxies) and contracts that specifically include bankruptcy as a termination event.

Nevertheless, the bankruptcy receiver may request that the bankruptcy judge terminate an agreement by establishing that the termination is on the interest of the bankruptcy estate. See also question 2.3 above on actions during the suspect period.

4.6 What is the ranking of claims in each procedure, including the costs of the procedure?

In general, the priority of preferential rights in Luxembourg bankruptcy proceedings can be split and ranked into three main categories:

1. Creditors of the bankruptcy, including legal expenses incurred after the opening of bankruptcy proceedings in the interests of all creditors.
2. Preferred creditors of the bankruptcy estate in the following order:
   - preferred creditors by law (e.g., certain employee claims and claims in favour of Luxembourg tax and social security authorities); and
   - creditors with non-bankruptcy proof security (both contractual and judicial in nature).
3. Ordinary unsecured creditors.
   It should be noted that Luxembourg law does not recognise the concept of equitable subordination. Therefore, shareholders are treated as subordinated creditors by virtue of holding equity only and being a shareholder will not affect their position or rank if they are also creditors in their own right.
   It is also worth mentioning that secured assets qualifying as financial collateral under the Collateral Law and/or subject to a mortgage are considered bankruptcy remote and will not fall within the bankruptcy estate. The holders of such security will therefore not be included in the bankruptcy waterfall.

4.7 Is it possible for the company to be revived in the future?

Yes, but the revival process is very rarely admitted by the courts since the insolvency state is factually assessed by the court on the day of the judgment.

5 Tax

5.1 What are the key tax risks which might apply to a restructuring or insolvency procedure?

The claim of the tax authorities is super privileged in the case of bankruptcy. They may hold a preferential right over a specific asset or a general preferential right over all the debtor's estate.

Also, in the context of debt restructurings, having creditors waive part of their claims against a Luxembourg debtor may create taxable income for that debtor.

6 Employees

6.1 What is the effect of each restructuring or insolvency procedure on employees? What claims would employees have and where do they rank?

Upon a declaration of bankruptcy, any employment contacts of the company are terminated with immediate effect (unless the receiver decides to let some or all of them continue to run to benefit the estate), and the employees are legally entitled to:

- their salary for the month in which the declaration is made and for the following month; and
- compensation of 50% of their monthly salary for the statutory notice period.

The amount owed to employees for the last six months of work and all compensation due as a result of termination of the employment contracts, up to an amount equal to six times the minimum salary, must be paid prior to any payments to secured creditors.

7 Cross-Border Issues

7.1 Can companies incorporated elsewhere use restructuring procedures or enter into insolvency proceedings in your jurisdiction?

The EU Insolvency Regulation holds that the centre of main interest (COMI) is the criterion on which the insolvency court's jurisdiction is based.

However, in cases where the EU Insolvency Regulation is not applicable, Luxembourg courts have previously held that the courts in the jurisdiction of the principal establishment/central administration of a company should have jurisdiction.

In Luxembourg, there is no recognition of a jurisdiction based on the location of a company's assets or any other connection

with another jurisdiction. Notwithstanding this, pursuant to the EU Insolvency Regulation, a foreign debtor whose centre of main interest is in Luxembourg may enter insolvency proceedings in Luxembourg.

7.2 Is there scope for a restructuring or insolvency process commenced elsewhere to be recognised in your jurisdiction?

In principle, the opening of foreign (non-EU) insolvency proceedings in respect of a Luxembourg entity is recognised in Luxembourg.

However, for the relevant proceedings to be enforceable against assets of the debtor entity which are located in Luxembourg, the judgment must follow the *exequatur* recognition procedure. An exequatur procedure includes:

- possible checks on the validity of the foreign court's jurisdiction to rule on the case according to the Luxembourg conflict of laws rules;
- the respect of the defendant's rights of defence;
- the non-contravention of Luxembourg international public policy; and
- a determination by a Luxembourg judge that Luxembourg law has not been evaded (*fraude à la loi*) as a result of the judgment.

Security interests that fall under the Collateral Law would, in principle, remain enforceable in Luxembourg regardless of the opening of any foreign insolvency procedures or any foreign judgments on insolvency.

Impact of Brexit on the recognition by Luxembourg courts of English insolvency proceedings

Any English insolvency proceedings opened after 1 January 2021 will be recognised in accordance with the above provisions for third (non-EU) countries, which is, of course, much more cumbersome and uncertain than an EU regulation-based automatic recognition. Also, the very limited cram-down options under existing restructuring proceedings in Luxembourg makes it currently difficult to ensure that UK proceedings like the Scheme of Arrangements (which previously benefitted from automatic recognition) can be implemented towards Luxembourg obligors.

Luxembourg courts recognition of EU Member State insolvency proceedings

Insolvency proceedings within the scope of the EU Insolvency Regulation (which determines jurisdiction based on the COMI of a company) are automatically recognised in Luxembourg. Secondary insolvency proceedings may also be initiated before the courts of any Member State against the same debtor in any Member State where it has an establishment. The effects of these proceedings are limited to the assets situated in the latter Member State.

7.3 Do companies incorporated in your jurisdiction restructure or enter into insolvency proceedings in other jurisdictions? Is this common practice?

It is relatively common practice for Luxembourg holding, debt issuing and treasury companies to restructure their/their group's debt or enter into rescue proceedings in other jurisdictions. The most frequently seen proceedings are UK schemes of arrangements (mainly prior to Brexit) and Chapter 11 bankruptcies in the US or similar proceedings elsewhere.

8 Groups

8.1 How are groups of companies treated on the insolvency of one or more members? Is there scope for co-operation between officeholders?

Akin to many other European jurisdictions, Luxembourg does not recognise the concept of a "group" or "consolidation" in a restructuring or insolvency context. Each member of a group is considered individually, as are their assets (except in certain situations where the corporate veil may be pierced, and the insolvency extended as a means of sanctioning the shareholder or director at fault).

Therefore, a debtor can be put into bankruptcy or become insolvent without necessarily affecting any of its affiliates. However, in practice, if proceedings are opened in Luxembourg and abroad for various affiliates, there will often be some form of cooperation between the receiver appointed in Luxembourg and any foreign insolvency officers appointed for other group companies rather than each of them managing their own company's estate independently.

9 The Future

9.1 What, if any, proposals exist for future changes in restructuring and insolvency rules in your jurisdiction?

The Luxembourg Government has for several years now been expected to significantly alter the Luxembourg restructuring tools. A Draft Law 6539 on the preservation of business and the modernisation of the bankruptcy law was filed by the government on 1 February 2013 (the **Draft Law**).

The Draft Law aims to modernise the Luxembourg restructuring regime and replace certain of the current reorganisation tools with new procedures to incentivise restructuring over bankruptcy proceedings.

The latest parliamentary works suggest amending the Draft Law to take into account the provisions of Directive (EU) 2019/1023 on preventive restructuring frameworks which has not yet been implemented in Luxembourg.

In particular, if in the course of a judicial reorganisation by collective agreement, the plan has not been approved by the affected parties in each class entitled to vote, it may nevertheless be approved on the debtor's proposal, or with the agreement of the debtor, and be imposed on the dissenting classes entitled to vote, if it has been approved by one of the classes of creditors entitled to vote and if the restructuring plan fulfils certain conditions detailed in the Draft Law.

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