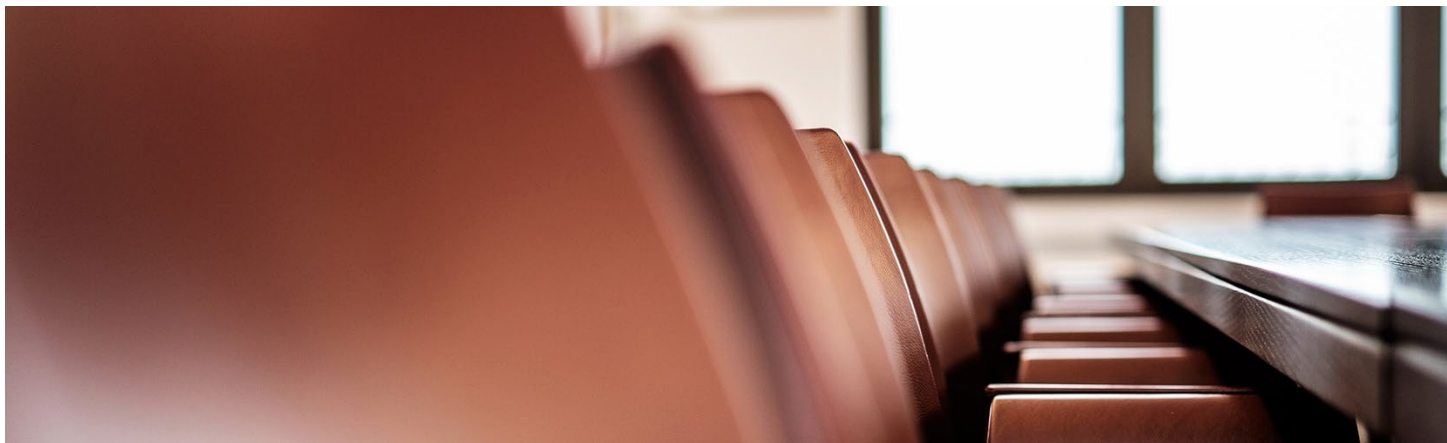


Luxembourg Out of Courts Arrangements

IBA Madrid 22/23 May 2023



« True » out of courts arrangements

- Current Luxembourg system essentially based on court insolvency proceedings dominated by bankruptcies and judicial liquidations.
- To avoid last resort bankruptcy proceedings creditor(s) will negotiate with their debtor(s) contractual out of courts arrangements such standstill agreements, refinancing operations (including at the creditor initiative assignment of claims to reduce exposure to certain constriction or improve profitability ratio or novation by substitution of creditors or at the debtor initiative, extension of maturity and/or waiver), subordination agreements, increase of the security package.
- Out of courts arrangements are not enforceable *erga omnes* and have only *inter partes* effect. In case of bankruptcy, no enforceability and can be challenged by the bankruptcy receiver (except for collateral arrangements subject to 2005 Law which are insolvency remote).

A new model to implement : Hybrid arrangements


- The Restructuring Directive has not yet been implemented under Luxembourg.
- Old fashion court based process still in place but this is eventually about to change with the modernisation of insolvency laws. A new law is about to be enacted introducing not complete out of courts arrangements but providing for a new form of arrangements « Hybrid » arrangements.
- What has been already introduced (from the Restructuring Directive) in the administrative dissolution without liquidation. This is not a tool for restructuring but mainly a way to expedite the dissolution of empty shells. The current law provide for the possibility for a company to petition the court to appoint a temporary administrator, quite rare in practice and controlled management proceedings nearly non existent.
- The new law will introduce an out of court reorganisation procedure by mutual agreement. The debtor will be able to enter with all or some (at least two) of its creditors into an out of court agreement which will become enforceable towards third parties upon homologation by the court. Hybrid arrangement that starts between the parties but allows to lift the uncertainties of « true » out of court contractual arrangement and risks linked to potential bankruptcy proceedings.
- A necessary modernisation of the law that shows promising results in other EU Member States.

A few statistics ...

Insolvency proceedings Luxembourg

	Temporary administrator	Composition with Creditors	Bankruptcy (opening)	Controlled Management	Judicial liquidation (opening)	Insolvency procedure (EC regulation)
Year 2015	6	0	2047	0	1135	3
Year 2016	11	0	2099	0	1075	0
Year 2017	12	0	1965	0	1136	5
Year 2018	22	0	2368	0	1072	8
Year 2019	24	0	2446	1	1217	10
Year 2020	10	0	2396	0	1588	5
Year 2021	10	0	2422	0	2003	7
Year 2022	7	0	2189	0	1612	2
janv-23	0	0	112	0	109	0
févr-23	0	0	121	0	47	0
mars-23	2	0	353	0	344	0

Source: RCS statistics available on https://www.lbr.lu/mjracs/jsp/DisplayCourtOrderActionNotSecured.action?FROM_MENU=true&time=1680787454169¤tMenuLabel=menu.item.courtorder

A blurred background image of a conference room with a long wooden table and several brown leather chairs. The room is brightly lit, likely from a large window in the background.

Contact us to discuss how we can support
your business in Luxembourg

Luxembourg Office

2 Place Winston Churchill

L-1340 Luxembourg

Tel: +352 44 66 440

Fax: +352 44 22 55

www.elvingerhoss.lu

Hong Kong Office

Suite 503, 5/F ICBC Tower

Three Garden Road, Central

Hong Kong

Tel: +852 2287 1900

Fax: +852 2287 1988