

New Restructuring Framework in Luxembourg – One year later, case law summary

UPDATE

On 1 November 2023, the Law of 7 August 2023 on business preservation and modernisation of bankruptcy law (the **Law**) entered into force, introducing a transformative framework for business reorganisation in Luxembourg. This Law established two innovative restructuring tools: the Consensual Reorganisation (*réorganisation par accord amiable*) and the Judicial Reorganisation (*réorganisation judiciaire*). Since the Law's enactment, 24 judicial reorganisation proceedings have been opened, according to the Luxembourg Insolvency Register. To date, we have identified 24 publicly available court decisions addressing various aspects of judicial reorganisation.

This update provides a concise overview of key case law as at 1 November 2024. These decisions can be grouped into the following categories: the conditions for opening a judicial reorganisation (1), the adoption of a reorganisation plan (2), and the transfer by court order (3). Before exploring each category, we will provide a brief overview of the new restructuring tools introduced under Luxembourg law.

Reminder: Overview of the consensual reorganisation and Judicial reorganisation

Consensual Reorganisation

The Consensual Reorganisation is a **confidential, out-of-court negotiation framework** aimed at facilitating settlement agreements (*accords amiables*) between a debtor and its creditors. This tool is not subject to strict formalities and is grounded in **creditor consent**. Creditors retain significant discretion as they may:

- refuse to participate in negotiations; and
- decline any restructuring proposals offered by the debtor.

This flexibility makes the Consensual Reorganisation particularly attractive for amicable resolutions. However, the requirement of the unanimous consent of creditors may limit its applicability in complex, multi-stakeholder scenarios.

Judicial Reorganisation

The Judicial Reorganisation is a **public, court-supervised** procedure designed to address imminent or long-term threats to a debtor's business. The key objectives include:

- Securing a settlement agreement.
- Adopting a reorganisation plan (*plan de réorganisation*).
- Facilitating the transfer by court order of all or part of the debtor's business.

Key features of judicial reorganisation include:

Debtor in Possession

Generally, the debtor remains in control of its assets and operations. However, an insolvency practitioner may be appointed at the request of third parties or the public prosecutor under certain conditions.

Stay of Individual Actions

Upon the debtor's request, the court may grant a stay of proceedings for up to four months, extendable to 12 months. During this stay, creditors are barred from enforcing pre-existing claims, except for certain

exceptions, such as wage claims. Financial collateral arrangements under the Law of 5 August 2005 on financial collateral arrangements remain enforceable.

Reorganisation Plan Voting and Confirmation

A plan will be considered as adopted when voting creditors representing more than 50 per cent in value within each of the two classes of creditors have voted in favour. The court must confirm the plan, ensuring compliance with statutory requirements, including the best interest of creditors test, plan viability, and necessity of any new financing.

Case Law Analysis

1 Conditions for opening a Judicial Reorganisation

In order to encourage the use of judicial reorganisations, the Law limits the conditions for opening such procedure. Case law has explored different aspects of these conditions:

- **Business Jeopardy.** The debtor's business must be in peril, either in the short or long term. A significant disparity between liquidity and liabilities typically suffices (e.g., [Luxembourg District Court, 10 January 2024, No. TAL-2023-10048](#), [Luxembourg District Court, 29 March 2024, No. TAL-2024-01712](#)). Conversely, a disproportion between the available cash and the liabilities do not preclude reorganisation (e.g., [Luxembourg District Court, 12 April 2024, No. TAL-2024-02787](#)).
- **Filing Requirements.** A debtor must file a petition with supporting documents. If unavailable, a note explaining their absence shall be submitted at least two days before the hearing. Failure to comply with such requirement results in dismissal but is subject to appeal from the debtor. Where the debtor submits the necessary documents or note at the time of the appeal, the opening of a judicial reorganisation ([Luxembourg Court of Appeal, 18 June 2024, No. CAL-2024-00499](#)) may still be granted. Additionally, where a debtor fails to mention the pursued objective in its petition, the court shall infer it from the circumstances of the case ([Luxembourg District Court, 12 April 2024, No. TAL-2024-02684](#)).
- **Management Misconduct.** Misconduct and bad faith on the part of a company's management do not preclude the opening of judicial reorganisation proceedings ([Luxembourg District Court, 22 November 2023, No. TAL-2023-09252](#) and [Luxembourg District Court, 5 April 2024, No. TAL-2024-02499](#)). However, the state prosecutor or any interested party may request the appointment of a provisional administrator in case of gross or serious misconduct. This may include failure to file annual accounts, significant debts owed to public creditors, operating without necessary administrative authorisations, or maintaining a shareholder account in debit party ([Luxembourg District Court, 22 November 2023, No. TAL-2023-09252](#) and [Luxembourg District Court, 12 April 2024, No. TAL-2024-02679](#)).

2 Adoption of a reorganisation plan

Judicial reorganisation case law on reorganisation plans remains limited but provides key takeaways:

- Plans must be approved by the majority of creditors in each of the two classes of creditors, representing half of the total principal amount of uncontested or provisionally admitted claims.
- The court shall verify that the plan passes the best-interest-of-creditors test and that each new financing is necessary for the reorganisation.
- The court shall verify that the plan is viable, also the court's role in evaluating the viability of the plan shall be "marginal" ([Luxembourg District Court, 10 January 2024, No. TAL-2023-10048](#)).

3 Transfer by court order

Creditors or interested third parties may petition for the transfer of part or all the assets or activities of the debtor under certain conditions. Key takeaways from case law include the following:

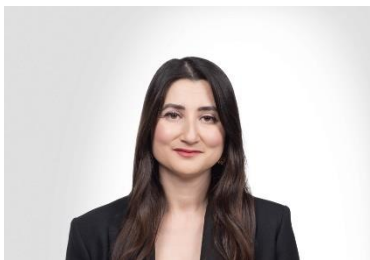
- **Eligibility to Petition.** A challenged claim may undermine standing for a creditor ([Luxembourg District Court, 18 December 2023, No. TAL-2023-09111](#)). Interested parties must not act solely to eliminate competitors ([Luxembourg Court of Appeal, 27 February 2024, No. CAL-2024-00012](#)).
- **Viability of the offer.** The interested third party is not required to provide, at the time of submitting its request for transfer, specific evidence of the viability of its offer ([Luxembourg Court of Appeal, 27 February 2024, No. CAL-2024-00014](#)).

- **Scope of Transfers.** The Law allows the transfer by court order of all or part of the enterprise or its activities in order to ensure their continuity. The court has held that foreign assets of a Luxembourg debtor can be transferred under such mechanisms ([Luxembourg Court of Appeal, 27 February 2024, No. CAL-2024-00012](#)). However, simply holding shares does not qualify as a transferable activity under the Law, as it does not serve the purpose of maintaining all or part of the enterprise ([Luxembourg Court of Appeal, 27 February 2024, No. CAL-2024-00014](#)).

Conclusion

One year after the entry into force of the law, it is highly encouraging to observe that practitioners have started using the new restructuring tools. The growing number of court decisions on judicial reorganisation demonstrates that these tools offer viable alternatives to the previously predominant option of business liquidation. While case law over the past year has provided preliminary guidance on several practical matters, substantial issues remain unresolved. As the judiciary bodies continue to shape Luxembourg's restructuring landscape, businesses and stakeholders have a unique opportunity to explore these tools as effective solutions for facing financial distress.

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