

Circular LBR 23/01

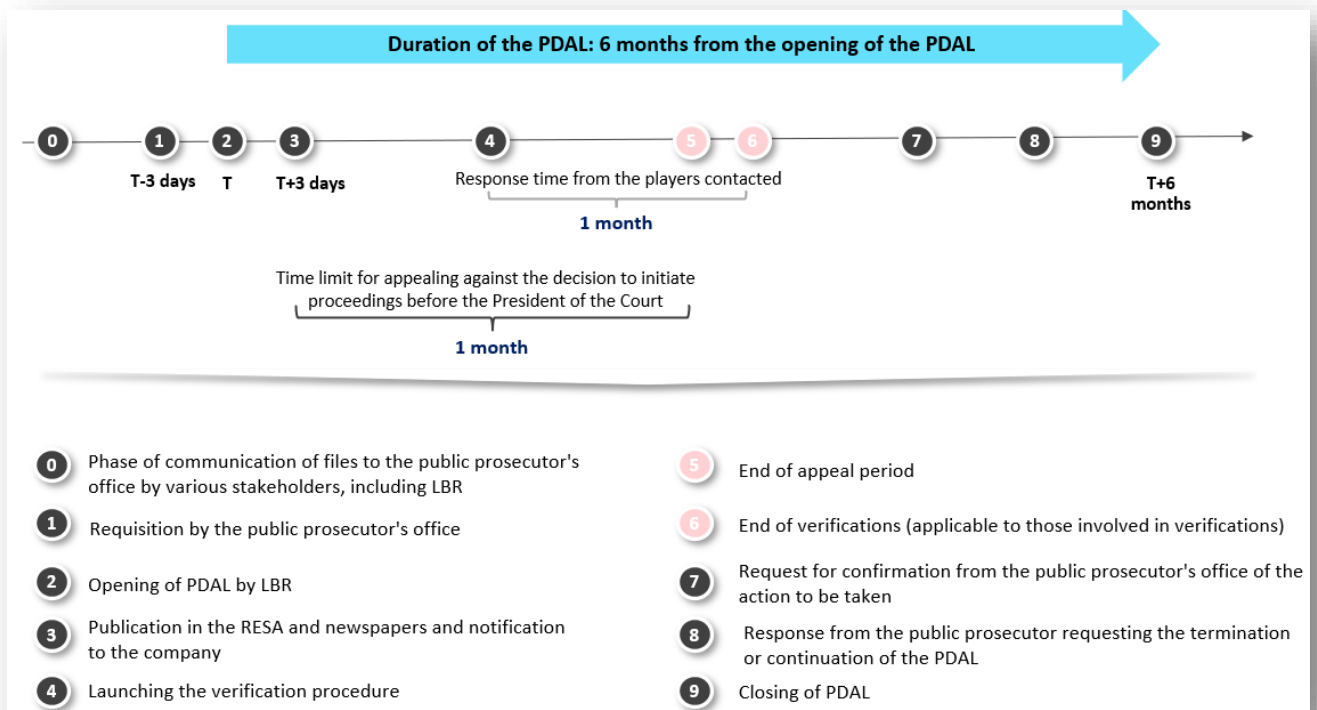
Concerns: Law of 28 October 2022 creating the procedure for administrative dissolution without liquidation.

The purpose of this circular is to present the new procedure for administrative dissolution without liquidation (1), the automatic striking off following a judgment closing bankruptcy proceedings (2) and the new Insolvency Register (3), introduced by the Law of 28 October 2022 creating the procedure for administrative dissolution without liquidation (hereinafter the "PDAL Law"), which came into effect on 1st February 2023.

1. Procedure for the administrative dissolution without liquidation

The procedure for administrative dissolution without liquidation (hereinafter the "**Administrative Dissolution Procedure**") makes it possible to dissolve a company without going through the formal procedure of a full judicial liquidation. The conditions and scope of application are set out in the PDAL Law.

The effective launch of the new procedure will take in place at the beginning of June 2023.



Descriptive diagram of the Administrative Dissolution Procedure

1.1 Scope of application

Any commercial company, with the exception of the companies referred to in article 2 of the PDAL law, which:

- has no employees and
- has no assets and
- pursues activities contrary to criminal law or seriously contravenes the provisions of the Commercial Code or the laws governing commercial companies.

(Art. 1 of the PDAL Law)

1.2 Commencement of the procedure

The Public Prosecutor initiated the administrative dissolution procedure without liquidation.

Based on the information it receives and whether there are clear and concordant indications that a commercial company is in serious breach of company law, it requests the administrator of the Trade and Companies Register (*Registre de commerce et des sociétés*, hereinafter the "RCS") to initiate administrative dissolution proceedings without liquidation.

The opening decision is taken by the RCS administrator, within three days of the prosecutor's requisition, and is:

- notified to the company at the address of its last registered office,
- filed and registered with the RCS and
- published in two Luxembourg newspapers and in the Electronic Compendium of Companies and Associations (*Recueil électronique des sociétés et associations*, hereinafter the "RESA")

(Art. 3 and 4 of the PDAL Law)

1.3 Verification procedure by the RCS administrator

After the publication of the decision to initiate the procedure, the RCS administrator carries out a verification mission to ensure that the company against which the procedure has been initiated has neither assets nor employees.

In this context, the RCS administrator requests information on the financial or administrative situation of the company from:

- credit institutions with which the company has a bank account or safe deposit box in its name,
- non-life insurance companies incorporated under Luxembourg law,
- the Luxembourg and Diekirch mortgage registries,
- the Land Registry and Topography Administration (*Administration du cadastre et de la topographie*),
- of the National Society of Automobile Traffic (*Société nationale de circulation automobile*),
- of the Social Security Centre (*Centre commun de la sécurité sociale*),

who have one month to respond to the request.

(Art 6 and 7 of the PDAL Law)

Once the checks have been carried out, the RCS administrator informs the Public Prosecutor of the results of his investigations:

- if assets and/or employees were discovered during the verification mission, the Public Prosecutor will ask the RCS administrator to stop the procedure.
The decision to terminate the procedure is then registered in the RCS and published in the RESA.
- if the absence of assets and/or employees has been confirmed during the verification mission, the Public Prosecutor asks the RCS administrator to continue and complete the dissolution procedure.

(Art. 8 of the PDAL Law)

1.4 Closing of the procedure

The Administrative Dissolution Procedure is closed no later than 6 months after publication of the opening decision.

The decision to close the procedure, taken by the RCS administrator, is published in the RESA.

It leads to:

- the dissolution of the company, and
- the automatic deletion from the company's RCS file, by the RCS administrator.

(Art. 9 of the PDAL Law)

1.5 Right of recourse

1.5.1 Recourse against the decision to open the procedure

A commercial company which is the subject of a decision to open the Administrative Dissolution Procedure, or any interested third party who considers that the conditions for such dissolution have not been met, may lodge an appeal against such decision within one month from the publication of the opening decision in the RESA.

The competent judge to rule on this appeal is the President of the chamber of the Luxembourg District Court sitting in commercial matters. The action is introduced and judged as in summary procedure.

The appeal is served on the RCS administrator and the Public Prosecutor.

(Art. 10 PDAL Law)

1.5.2 Recourse after closure of the liquidation proceedings

If any assets emerge after the closure of the Administrative Dissolution Procedure, the District Court sitting in commercial matters may, at the request of the Public Prosecutor, revoke the decision to close the Administrative Dissolution Procedure and order the liquidation of the concerned company.

This decision is registered in the RCS and published in the RESA.

The company is then deemed to exist for the purposes of its liquidation.

(Art. 13 of the PDAL Law)

2. Automatic deregistration following a judgment closing a bankruptcy proceeding

A new article 536-2 has been included to the Commercial Code, stipulating that the judgment closing the bankruptcy proceedings dissolves the legal person and immediately closes its liquidation.

The automatic deregistration, by the RCS administrator, is provided for in article 18(3) of the amended Grand Ducal regulation of 23 January 2003 implementing the amended law of 19 December 2002 on the RCS as well as the accounting and annual accounts of companies.

Companies whose bankruptcy proceedings have been closed after the entry into force of the PDAL Law will be automatically deregistered by the RCS administrator.

For companies whose bankruptcy was closed before the PDAL Law came into force, only those that have not filed for more than two years from that date will be dissolved as of right and automatically deregistered by the RCS administrator, in accordance with a procedure laid down by the PDAL Law.

(Art. 14 and 19 of the PDAL Law)

3. The Insolvency Register (REGINSOL)

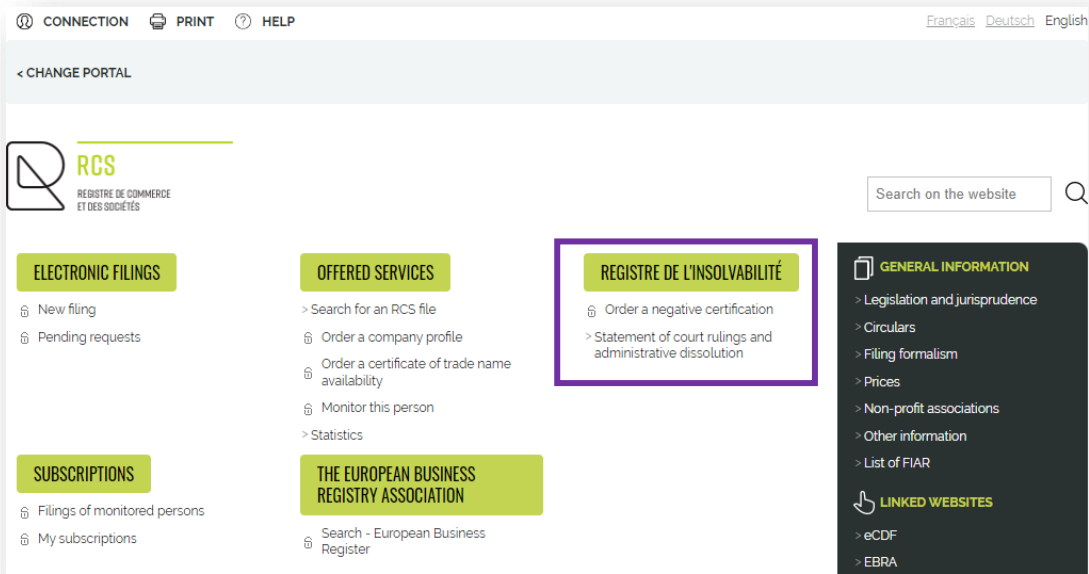
3.1.1 Introducing the REGINSOL

This new register is introduced by article 16 point 3° of the PDAL law, which inserts a new Chapter VII into the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of companies, entitled "*The Insolvency Register*".

It follows from the new article 23-1 of the aforementioned 2002 law that "*the information relating to insolvency proceedings registered in the Register of Commerce and Companies pursuant to article 13 points 4 to 12), 16) and 17) shall be grouped together in an Insolvency Register (in abbreviated form REGINSOL) which may be consulted on the website of the administrator of the Register of Commerce and Companies*".

This register does not therefore constitute a new database, but includes the data appearing in the RCS, covering court decisions and administrative decisions to dissolve companies. It is managed by Luxembourg Business Registers, which also manages the RCS.

REGINSOL can be accessed via the RCS portal.



Access to REGINSOL

3.2 Decisions and information included in the REGINSOL

3.2.1 Decisions included in the REGINSOL

- judgments and rulings declaring bankruptcy or confirming or terminating the composition obtained by the bankrupt,
- judgements and rulings approving, annulling or resolving preventive bankruptcy arrangements,
- rulings rehabilitating the bankrupt or granting a suspension of payment or revocation of the latter,
- court rulings concerning audited management,
- court decisions dissolving or ordering the liquidation of a company, an economic interest grouping, a European economic interest grouping or other registered legal persons or entities and appointing a liquidator,
- court decisions ordering the closure of a foreign company's establishment in the Grand Duchy of Luxembourg,
- court decisions imposing a ban in accordance with article 444-1 of the French Commercial Code,
- court decisions appointing and terminating the mandate of a provisional administrator or receiver,
- judicial decisions issued by foreign judicial authorities relating to bankruptcy, composition or other similar proceedings in accordance with Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings,
- a court decision to terminate the Administrative Dissolution Procedure,
- the decision to open or close the Administrative Dissolution Procedure.

(Art. 16 point 1° of the PDAL law)

3.2.2 Information registered with the REGINSOL

- the court which issued the decision,
- the type and, if applicable, the sub-type of proceedings, as well as the case reference number,
- where applicable, an indication that jurisdiction to open proceedings is based on Article 3(1), (2) or (4) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings,
- the date on which the procedure was opened or closed,
- the postal address of the person subject to the proceedings, if different from the address entered in the trade and companies register,
- the surname, forenames or, in the case of a legal person, the name or corporate name of the guardians, curators, provisional administrators, receivers, liquidators and insolvency practitioners, as well as their postal or e-mail address,
- where applicable, the full name of the magistrate responsible for supervising the proceedings,
- where applicable, the deadline for filing claims,
- the court before which an appeal may be lodged and, where applicable, the time limits for lodging an appeal.

(Art. 16 point 2° of the PDAL law)

3.3 Documents issued by the REGINSOL administrator

3.3.1 Record of judicial decisions and administrative dissolution without liquidation

The list of judicial decisions and administrative dissolution without liquidation registered in the RCS is available in REGINSOL, on the RCS portal (www.lbr.lu).

A statement per type of decision is available in CSV or PDF format, on a monthly basis. Each statement includes the name and registration number of the entity against which a decision has been registered in the RCS, as well as information about the decision (judicial or administrative) rendered.

3.3.2 Certificate of non-registration of a judicial decision or administrative dissolution without liquidation

A certificate of non-registration of a judicial decision or administrative dissolution without liquidation ("negative certificate") concerning a person registered with the RCS consists of the issuance by the RCS administrator of a document certifying that no decision listed in article 13 of the amended law of 19 December 2002 concerning the RCS and the accounting and annual accounts of companies is registered with the RCS in respect of that person.

Such a certificate is available in electronic or paper format and must be ordered online via the RCS portal (www.lbr.lu).

3.3.3 Coming soon

- REGINSOL excerpt

A REGINSOL excerpt containing information relating to judicial decisions and administrative dissolution without liquidation will soon be available. This excerpt will include all current court decisions and administrative dissolution without liquidation affecting the concerned person.

- REGINSOL consultation and search web page

In the near future, Luxembourg Business Registers will make REGINSOL consultation screens available, allowing direct and offline access to the information registered in the REGINSOL (*see point 3.2.2*).

New search criteria and filters will also be made available, including a search by legal representative.

For LUXEMBOURG BUSINESS REGISTERS

(s.) Yves Gonner
Director



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- *are general in nature and do not pertain to the specific situation of any natural or legal person;*
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 - *do not constitute a professional or legal opinion;*
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