Luxembourg, 21st October 2011

Circular RCSL 11/3

Subject: Decision on the cancellation and revocation of the voluntary liquidation of a company

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- Are of a a general nature and are not aimed at a particular situation applicable to any individual person or legal entity ;
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- Are not to be used as a substitute for legal or professional advice ;
- Only reflect the opinion of the "RCS" on a number of issues which remain subject to any interpretation issued by Courts and Tribunals.

The present circular aims at stipulating the "RCS" Manager's position with regards to filing requests for decisions cancelling any deeds of voluntary liquidation of a company, with continuation of their activities, whether privately drafted or certified by a notary.

Several elements may cause the "RCS" Manager to oppose any such decisions.

Firstly, cancellation of a decision of voluntary liquidation is not legally justified. On the contrary, several legal dispositions prove that it is not possible to counter the status of voluntary liquidation of a company:

- The Luxembourgish Legislator expressly states, within article 12 quinquies of the amended law of the 10th of August 1915 concerning commercial companies (hereafter referred to as "the amended law of 10th August 1915"), that the dissolution of a company automatically implies its liquidation. Hence, both liquidation and the ensuing repartition are deemed irreversible operations.

- Other texts implicitly confirm this statement :

  - Article 141, 1st subparagraph of the amended law of the 10th August 1915 states that commercial companies are deemed to exist past their dissolution for their liquidation. Case law does confirm that, despite any dissolved company continuing to exist as a legal entity up until its liquidation, this fiction, which is based on absolute necessity, must cease to exist upon expiration of these needs. Existence of this fiction is thus solely due to the company's liquidation. (Supreme Court, 13th March 1901; District Court of Luxembourg, 18th February 1870; Court of Appeal, 5th March 1997").

  - Article 143 of the amended law of the 10th August 1915 expresses the requirement for a liquidator to be appointed upon dissolution of the company. Failure to appoint a liquidator will result in the administrators of the public company limited by shares to be deemed liquidators with respect to third parties.

  - Duties of the company's management body are terminated upon dissolution. Section VIII of the amended law of 140th August, 1915 with regards to liquidation, does not actually refer to the management board, even in reference to the liquidation process.

Furthermore, filing of any such decisions with the "RCS" is not legally required.

From then on and during the overview checks as described in article 21(2), subparagraphs 3 and 4 of the amended law of 19th December 2002 on the Luxembourg Trade and Companies Register as well as the accounting and the annual company accounts, for which the "RCS" Manager is responsible, requests for filing of any deed, whether privately drafted or issued by a notary, with reference to cancellation or revocation of the voluntary liquidation of a company, will be rejected by the "RCS" Manager.

Any refusal issued by the Manager may be challenged via an appeal presented to the Magistrate presiding over the District Court of Luxembourg for traders, and to the President of the Court for all other categories, within an 8-day period following the notification of the rejection decision.
Similarly to all matters of expedited proceedings, as per articles 934 to 940 of the new Civil Procedures Code, as per article 21 (4) of the abovementioned amended law of 19th December 2002, both the State Prosecutor and the General State Prosecutor are notified of the writ and deed of appeal.

On behalf of the Manager of the Luxembourg Trade and Companies Register,

(s.)Yves Gonner
Director