

Cover Story

Entrepreneurship



Fall and get back up

TEXT Corinne Briault / House of Entrepreneurship/Economic Affairs/Legal Affairs and Advice, Chamber of Commerce

While many companies have great success, others fail in the first decade of their existence. Often, failing is seen as a necessary step in the life of an entrepreneur. Failure is at best seen as a rite of passage and at worst, an ordeal from which the entrepreneur will be unable to recover. Failure, however, is neither a rite of passage nor the end of a project and the majority of entrepreneurs who fail manage to bounce back and then experience full success.

For most entrepreneurs, without over generalising, embarking on an entrepreneurial adventure can be compared to taking a roller coaster ride. Two options then face the would-be entrepreneur: to be afraid of falling throughout the ride, or on the contrary, to draw new energy and new ideas from experiencing each of these ups and downs and rely on the advice of Winston Churchill: *"Success is the ability to go from one failure to another with no loss of enthusiasm"*.

What weak spots?

The longevity of a business depends on several essential factors: the business sector in which it operates; the management team; the financial investment and involvement of partners, all are part of it.

Among the weaknesses responsible for a business's closure may be an internal lack of skill in the management team, which is enough to jeopardise the sustainability of a business, even in the very short term. A business manager lacking experience will not necessarily make the right decisions, especially in terms of management and human resources.

Then, in many businesses threatened by bankruptcy, if the management team cannot agree on how the business should be

run, this can lead to difficulties so that problems become impossible to resolve and cause the company to slide towards failure.

Maitre Rachid Elmam is a lawyer and entrepreneur who created, amongst other things, the Next Level Business Team organisation and who practiced for several years in various firms specialising in business law. He has advised hundreds of entrepreneurs and in the numerous interviews he has given he emphasises the importance of managers detecting the faults in the business. *"To avoid a potential crisis, it is important that the company is well structured"* (...) that it is made up of *"reliable and productive employees"* (...) and is based *"on a good organisation able to detect problems rapidly"*, he explains. The rigorous management of a company therefore consists in managing risks and structuring tasks in order to ensure its sustainability in the short and medium term. Poor organisation within a company can lead to a succession of consequences. Poor management may also lead to a lack of vision about the company's future and therefore an inability to define a viable long term economic model, poor inventory management, an increase in customer loans, too little negotiating power with suppliers, then a lack of profitability with uncontrolled fixed or variable costs. All these points affect the financial health of the company and can cause banks, and even investors, to lose trust.

However, there are also factors leading to business failure over which entrepreneurs have no control. Indeed, many bankruptcies are linked to external factors: for example, a health crisis like Covid or roadworks in a city centre removing customers from the catchment area because traffic is too difficult. An entrepreneur may also simply have bad luck, experience difficulty in keeping the business afloat, and fail without making any errors in management or cash flow.

Startups on the front line?

In recent years, startups have been legion. They are born almost every day, but lead does not always turn into gold. Many young startups fail as quickly as they have sprouted. While there are many reasons for their disappearance, they often fail because they cannot find a market for lack of prior research. Unfortunately, without this research, entrepreneurs often run straight into a brick wall. Then, even if the market is ready and the product is strong, a startup can fail when left in the hands of inexperienced leaders in many ways. There are many examples of starter-uppers who have crossed the line and failed, and sometimes they also drag their suppliers and customers down with them. The case of Permigo (a French online driving school company) is an example. This startup found itself in receivership after only a year of existence. Along with a

loose business model, the glut of fees drove the company to ruin, leaving customers, who lost their driving license fees, by the wayside.

From startup to viable business

How can we explain how some companies cross the divide and make their business durable whilst others do not? Why do companies that offer very attractive products and services, and operate in a market characterised by high demand, end up failing? Could it simply be the poor approach or the inability to develop a valuable proposition? In a competitive market where supply is abundant, it is important to stand out from the crowd. The most successful companies are those that manage to develop a personalised approach and services that no others offer, attracting the attention and interest of customers and prospective customers or those who have innovative processes and are therefore more productive than others. Another way to prevent a business from sinking: it must do everything to not stray from the reality of its target market so as not to offer unsuitable products and services. Contact with the target market, i.e. customers and prospects, is essential. Adapting your business model as you go, listening to your customers and knowing how to observe their behaviour is one of the main qualities of long-lasting companies. Laurence Halifi, director of several companies and trainer, particularly within the *Graines d'Entrepreneurs* programme, explains to future start-up founders that it starts with: "developing an offer that meets the needs and aspirations of customers willing to pay for your product or service."

Lack of cashflow is also responsible for nearly a third of early start-up bankruptcies. Wanting to make money by creating a start-up is one thing, managing your cashflow is another. Poor accounting practices inevitably lead to failure. In some situations, it is the disproportionate enthusiasm of the leaders that leads to initial success but then to difficulties. For example, a successful website can very quickly generate too many orders, which then require many resources that the company does not have at its disposal at the key time. Another mistake, the head of the company orders more stock than necessary and invests heavily, without then managing to sell it. Knowing how to surround yourself with competent people, collaborators, accountants, bankers, or reliable suppliers from the start is one of the keys to the success of prosperous businesses. Unfortunately, for smaller companies that are starting out, accessing

"An entrepreneur can have difficulty keeping the business afloat and fail without making any management or cashflow errors."



finance is often difficult and can then limit the recruitments or developments mentioned above.

Fall and get back up

While many entrepreneurs have seen their first business go bankrupt, not all of them admitted defeat. Before launching Meetic in 2002, didn't Marc Simoncini experience failure? At 22, he launched CTB, his first company specialising in the creation of Minitel sites, and went bankrupt after three

years. Another emblematic example: Denis Chalumeau should have become a millionaire by selling the Promovacances site on September 10, 2001. The next day, the transaction was canceled after the attack on the Twin Towers in New York and he filed for bankruptcy. He bounced back by creating the SeLogger.com site, which he sold ten years later for 650 million euros. The mythical Henry Ford was not immediately successful either, as his first venture was a total failure that ruined him. He would only recreate Ford Motor Company five years

01. 02. Starting a business requires preparation and making important decisions. To create a business project, it is necessary to take it step by step.



later which enabled him say that "to fail is to have the opportunity to start over in a smarter way." Honda, the company worth billions of euros today, was also a series of failures. Soichiro Honda's first failure? He failed a job interview for an engineering position with Toyota, was unemployed for a long time, and then began to build scooters at home. Encouraged by his neighbours, he finally decided to start his own business. Akio Morita also had his share of failures before founding Sony. When he started out, his company only produced pressure

cookers and it didn't work at all: he only sold 100 units. Bill Gates, too, had a chaotic journey: after leaving Harvard University, he founded a business with his colleague Paul Allen, which was unsuccessful. This did not prevent him later launching Microsoft. Finally, Walt Disney was fired by his publisher because "he lacked imagination and did not have good ideas". After this event, Disney tried several times to create small businesses that each failed, leaving him totally ruined before bouncing back.

Covid: facing the unforeseeable

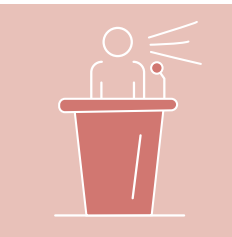
Far from all the points previously mentioned, there also exist in the life of any company - and we have recently experienced one - exceptional and unimaginable crises such as Covid-19. An exceptional crisis, a singular situation: Covid risks leaving many companies by the wayside in a manner where it will not be possible to point the finger at poor management or bad strategic decisions. Indeed, among those companies exposed to failure, the analyses are far from



Online workshops

Whether it is to create a business, learn about the key steps in drafting a business plan, regulatory frameworks, or to find solutions to meet the challenge of recovery in this period of the Covid-19 crisis.... The multidisciplinary team of the House of Entrepreneurship is there to advise, assist and support you and regularly offers online workshops and webinars in order to respond to the various issues encountered by entrepreneurs at all stages that mark a company's life cycle.

■ More information:
www.houseofentrepreneurship.lu



Inspiring Fuckup Nights

The Fuckup Nights were born in 2012 in Mexico City. One evening, five friends are chatting over a drink. They realised how tired they were of hearing the endless success stories of serial entrepreneurs who always seemed to be successful. They decide to take the opposite view and share their stories of failure. As the evening wore on, this exchange turned out to be more and more rewarding. They then chose to replicate the event by inviting other friends to join them, and asked three of them to share their failure experiences. Since then, Fuckup Nights have taken place all over the world. Stories of the business crashing, the partnership deal going sour, the product that needs to be recalled, no misfires are spared. The concept has an official website which features blogs and other videos.

■ More information:
www.fuckupnights.com



counting only "lame ducks". The crisis is also affecting "productive" companies, with neither management nor cashflow problems, but which find themselves, nonetheless, in serious difficulties. The health crisis will also cause a major deterioration in the health of companies even if they succeed in overcoming the problems they have encountered since the start of this pandemic.

A recovery plan...

It must be noted that the bankruptcy statistics in Luxembourg are more and more alarming and that the forecasts for the coming months are far from optimistic. In 2018, 1,195 companies were declared bankrupt, an increase compared to 2017. The number of bankruptcies of companies over 5 years old is particularly on the increase while, at the same time we see a decrease in the bankruptcy rate among younger firms. This general development has been observed since 2008 in Luxembourg, while the opposite trend has been observed abroad. As for the sectors most affected by bankruptcies, they are above all those in services and commerce.

To deal with the consequences of the Covid-19 health crisis on Luxembourg companies, the Government has presented a package of support measures aimed at laying the groundwork for a new start for the Luxembourg economy. With a package of additional measures which should have a final cost of between 700 and 800 million euros, the Government has so far allocated 3 billion, or 5% of GDP, to support the economy. Encouraging employment, supporting companies in the sectors most affected and promoting a sustainable economic recovery: these are the three priorities of this package called Neistart Lëtzebuerg and which focuses on a sustainable and united recovery of the Luxembourg economy. In the coming months, these measures will support companies and employees towards post-Covid economic normality and will gradually take over from the measures of the economic stabilisation package drawn up by the Government to support the economy in the face of the immediate consequences of the pandemic (see Chamber of Commerce website / Covid-19).



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...and recommendations from the Chamber of Commerce

These measures are in part in line with the proposals made on 12 October 2020 by the Chamber of Commerce. These latest recommendations are more comprehensive and tackle a specific difficulty, covering the fixed costs of those companies most affected by a drop in turnover. Thus, the Chamber of Commerce pleads more precisely for Luxembourg to follow the example of Austria and Germany, which have introduced a relatively broad fixed cost coverage scheme ("Fixkostenzuschuss", FKZ), so that companies in difficulty can cope with the constant level of fixed costs: fixed costs that must be paid even in the absence of activity (rents, depreciation, leasing costs, energy, etc.) and which most seriously affect companies lacking in activity.

Seeing failure differently

To stop seeing bankruptcy as something shameful, mentalities must change but the road is long. Since its inception, an

03. In a competitive market where supply is abundant, it is important to stand out from the crowd. The most successful companies are either those with a personalised approach offering services that no one else does to attract the attention and interest of customers or those with innovative processes which are therefore more productive than others.



Laurent Kratz
CEO Neofacto Group

"Everyone can make a mistake, but you have to know how to limit the damage"

Can you tell us about your entrepreneurial journey?

Before launching my current business, I founded an engineering company in 2000 which filed for bankruptcy in 2005. We made the mistake of coupling our activities with others, related to shows and events, even though these two areas bear no relation to each other. The companies related to events and shows required a lot of investment and very quickly proved to be a money pit. They were totally unprofitable which quickly led to non-payment of bills and admission of bankruptcy. To make matters worse, I showed immense naivety by signing contracts with leonine clauses which I did not understand. [Editor's note: which attributes to a co-contracting party rights that are absolutely disproportionate to its obligations.] [Translator's note: often referred to as "abusive", "lion's share" or "one-sided" clauses in English.]

What did you learn from this experience? What tools do you think should be in place to help entrepreneurs who start or fail?

I learned several things. First, it is better to call in specialists, such as lawyers, before signing contracts. At first it may seem like a heavy investment, but then it avoids many (very) unpleasant surprises. Then, we must also insist on training which should be the starting point for any activity and, why not, compulsory for those who have failed? I also think that you have to put aside any emotion when starting a business and set yourself check points. When you start a business, you bet on the future and, quite often, just like a parent with their child, you cannot see the flaws in your business! For an entrepreneur, the company is much more than a business and it is difficult to admit to yourself that you have reached a limit - that this does not work, that you must stop persisting and move on. Anyone can make a mistake, but you have to know how to limit the damage and you should never persist in making mistakes. You have to know how to stop in time, adapt and innovate. Failure comes from stubbornness and success comes from realising it.



ambivalence remains about the French term for bankruptcy - *faillite*, which comes from the Italian *fallire*, to miss and from the Latin *fallere*, which implies the idea of deception. For a very long time therefore, bankruptcy was considered infamous, and intended to stigmatise the dishonest debtor. Under Egyptian law, the debtor could be reduced to slavery, in the Middle Ages, the merchant's bench was broken and although Napoleonic legislation in France improved the situation, the debtor was imprisoned and the arrest was deliberately and exemplary humiliating... In the dictionary, failure is defined as: *the negative result of an attempt, of an enterprise, lack of success; defeat, failure, setback*.

It is quite different in the Anglo-Saxon countries, where failure is fully part of risk-taking, as in the United States for example where bankruptcy is considered as the justified result of an operation that was worth the effort attempted, whilst in European countries, it is rather denounced by society. Considering failure as a rewarding experience from which the entrepreneur can learn how to bounce back is the first step towards an essential change of mentality where it will be necessary to consider that a majority of successful entrepreneurs may have started out by making mistakes,

because 'they may have ventured into uncharted territory'.

After, there is life

In order for entrepreneurs to get back on their feet and benefit from advice, initiatives are starting to emerge. Collectives are created to defend a "new vision" of entrepreneurship and help others get back in the saddle after a fall, such as *Les Rebondisseurs* (Rebounders) in France, who want to create a community to change the outlook on those who have failed. Many initiatives are emerging that give voice to those who have bounced back and turned their failure into success. The *Second Souffle* (Second Wind) association, for example, supports bosses whose businesses have closed, in order to help them find a job or start a new project.

This freedom of speech aims to play down the drama and help entrepreneurs get back on track. It reached its climax with the "Fuckup Nights", a concept invented in Mexico, where during a party, the floor is given to people who recount without any "bullshit" their biggest "fuck-ups", mistakes and failures and what they have learned from these experiences. "Fuckup Nights" give the lie to those who say bankruptcy is

something shameful to be hidden. The concept is a worldwide success: it is present in 250 cities, in 76 countries, including Luxembourg, which hosted its first evening of this type at the House of Entrepreneurship of the Chamber of Commerce in 2019.

Do not stay alone

In order to avoid bankruptcies, European countries are also trying to develop a whole series of initiatives aimed at preventative work among businesses. Aware of the challenges and loneliness that entrepreneurs often face, in 2018 the House of Entrepreneurship launched its Viability Centre service (now #ReAct), intended to help the self-employed and business leaders update their professional situation and find new solutions for the sustainability of their business. The objective of this initiative today is to determine the priority actions to be implemented and to offer them tailor-made support in order to take concrete steps to develop, optimise or turn around their business. This programme also enables rapid intervention to increase the likelihood of a company recovering and finding a stable economic situation or even sustainable growth. On the other hand, if a business encounters insurmountable difficulties, it needs to realise it and be shut down at an



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early stage of the crisis. The intervention can then help avoid uncontrollable debt for the business owner, thus providing a second chance to start a new business. Then, thanks to close collaboration with the Early Warning Europe programme, an initiative coordinated by the European Network for Early Warning and for Support to Enterprises and Second Starters under the EU COSME programme, a service offer has been developed in Luxembourg since July 2019. Early Warning Europe has the general objective of promoting entrepreneurship and the growth of SMEs in Europe. One of the key elements of their vision is to create solid framework conditions for entrepreneurs and companies from all sectors, to help them face key challenges, including crisis management, bankruptcy and the possibility of getting a second chance. On this basis, many initiatives have been developed in different countries. Founded in 2007, the German social enterprise Team

04. 05. 06. There are, however, in the life of any company, and we have recently witnessed this, exceptional and unimaginable crises like COVID-19.



Emilie Pirlot
Entrepreneurship Project
Coordinator, House of
Entrepreneurship

"Not all failures have the same cause, so they don't require the same response."

Why is it important to stop demonising failure in entrepreneurship?

For an entrepreneur, going bankrupt is itself a difficult ordeal to face. This ordeal is often compared to the emotional curve one can experience during grief, which involves distress, anger, guilt, etc. The stigmatisation of bankruptcy will only lengthen the time it takes for an entrepreneur to bounce back. In 97% of bankruptcies the entrepreneurs are of good faith and owe their failure to a mistake. As a result, only 3% of bankruptcies are fraudulent in nature. I often quote Nelson Mandela who said *"I never lose; either I win or I learn"* or James Dyson, who made over 5,000 prototypes of his bagless vacuum cleaners before he found the right formula and who explains in interviews that each of his failures has taught him how to improve. Everything must be done so that failure is not seen as the end of a project, but as a step towards progress and innovation in a personal and professional journey.

What tools are available to businesses that have failed? How to improve existing systems?

Unfortunately, Luxembourg companies which go bankrupt are at a disadvantage. They are faced with reams of regulations that are more obstacles to their rebound than aids to support them in a resumption of business. For example, repaying debts to the State before being able to get a new business permit makes it almost always impossible to restart a business. The European Commission has voted for a new directive to put tools in place to give Luxembourg businesses a second chance, but currently nothing exists, and this is a real problem. We should start by reforming the legislation. We have been talking about the bill on the modernisation of the bankruptcy law for seven years! Next, you should not limit your field of vision to what to do after a company has gone bankrupt, but rather face the problem and find out how to avoid bankruptcy. We should be inspired by what is done abroad where many countries are acting upstream. We often see, with the #ReAct business support programme set up by the House of Entrepreneurship of the Chamber of Commerce, that businesses contact us when it is already too late. For many of them, if they had approached us even six months earlier, it would have been possible to act. We need 360-degree support to find tailor-made solutions because not all failures have the same cause, and therefore do not require the same response.



The Art of Failure

British journalist and bestselling writer Elizabeth Day is the author of several books (The Art of Failure, How to Fail: Everything I've Ever Learned from Things Going Wrong) in which she plays down failure. Without lying and with a certain dose of humour, in her books, she is inspired by her own personal setbacks, but also by her famous podcast How To Fail which has seen many celebrities confide on the subject. At a time when social media dictates what success has to be and everyone flaunts their perfect 'presumed' life punctuated with rowdy hashtags, these hiccup stories help us reconsider what failure is: what if to fail was actually a unique chance to reinvent yourself?



#ReAct - tailor-made support

Do you feel helpless in the face of the current crisis? Are you facing liquidity or inventory management issues? Are you wondering what strategy to adopt to relaunch your business and how to adapt to this uncertain environment? Are you considering layoffs or are you worried about conflicts with partners or clients? Wondering how to manage your safety and social distancing obligations? For all these questions and many more, a team is there to help you find tailor-made solutions and support you in their implementation. Thanks to a network of experts in the legal, strategic and personal fields, new avenues of reflection, support and implementation workshops are possible.

■ More information:
(+352) 42 39 39 850
(Mon-Fri 9am - 12 noon and
2pm - 5pm)



U offers free support to entrepreneurs in distress. This advice is given to companies of different categories: SMEs, the self-employed, family businesses, owners of real estate and startups or founders. The goal of Team U is not only to help companies find the path to success and thus support the existence of the company with its jobs, but also to create personal added value for the entrepreneur. To achieve this goal, Team U makes use of a team of experts and volunteers who have themselves had to go through a similar situation and who provide practical advice based on their personal experience. They also offer a free hotline, self-development groups, an online service allowing the entrepreneur to monitor the state of their business, and tailor-made advice. Since 2015, Dyzo, a non-profit organisation in Flanders, has also been helping entrepreneurs who face problems that they cannot solve on their own. Dyzo not only

assists them in the economic or managerial functioning of the business, but also offers them psychological support. The association has 10 employees and 20 volunteers who offer advice by phone or email.

Do we need a bankruptcy law?

For years, the Luxembourg legislature has tried to implement several reforms concerning bankruptcy law. In particular, the Government tabled a bill in 2003 aimed at preventing and combating organised bankruptcies and prepared a draft bill on controlled management which aimed to combat the proliferation of bankruptcies. However, none of these initiatives have come to fruition to date. In 2013, the legislature drafted a major bill, amended in 2018, aimed at completely reforming bankruptcy law. Based largely on Belgian law, it includes several repressive aspects but also



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"In Anglo-Saxon countries, failure is an integral part of risk-taking, as in the United States where bankruptcy is seen as the justified result of an operation that was worth trying."



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so-called preventive and remedial aspects. In addition, Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring¹ frameworks has been adopted. Its primary aim is to harmonise at a minimum the law of companies in difficulty within the European Union and to try to erase the disparities that could exist between the different national regimes. This new Directive (EU) 2019/1023 revolves around three main axes: prevention, second chance and restructuring.

In Luxembourg, a necessary law

The importance of a bankruptcy law adapted to the economic reality in the Grand Duchy and the need for an adequate prevention mechanism that supports entrepreneurs in difficulty are underlined by the bankruptcy statistics in Luxembourg. In 2019, the number of companies that declared bankruptcy was 1,263, an increase from 2018. This represents a record level of bankruptcies. It is mainly small businesses (less than three employees) that are concerned².

07. 08. So many bankruptcies are linked to external factors. The entrepreneur may have done everything possible and not have made any internal management or cashflow errors but still experienced difficulties in keeping the business afloat or failed just because of bad luck.

1. European Union, 2019, Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132. Official Journal of the European Union

2. Response of the Deputy Prime Minister, Minister of the Economy, Etienne Schneider, to parliamentary question No 184 of 11 January 2019 from Deputy Mars di Bartolomeo

**Lex Delles**

Minister for Small and Medium-Sized Enterprises and Minister for Tourism

"It is essential to stop being dramatic about failing and encourage entrepreneurs to become active"

Why do you believe it is important to stop being dramatic about failing?

Starting a business and running it successfully is a challenging task, as there is inevitably some risk associated with setting up a business. Our economy and our society, however, need dynamic people who dare to start businesses, because companies are essential for job creation and economic growth. It is therefore essential to stop being dramatic about failing and encourage entrepreneurs to become active and give them the right to a second chance. Our insolvency laws should allow for a fresh start. It is therefore planned to reform the rights of establishment in order to redefine the conditions of good repute. The goal is to stop stigmatising people who become bankrupt with the introduction of the "second chance" concept. Therefore, it will be necessary to adapt the legal texts in order to better distinguish people involved in a bankruptcy according to the reasons for that bankruptcy. It would be necessary, for example, to be able to respond to an application for a new authorisation to trade after a bankruptcy caused by bad luck. Bankruptcy due to mismanagement should lead to compulsory management training before being able to proceed with an application for a new business license. The General Directorate for Small and Medium-Sized Enterprises is also considering setting up thresholds and deadlines after which the accumulated debts will no longer be payable, either in full or in part.

Isn't talking to entrepreneurs about failure a necessary step in fostering an entrepreneurial culture and promoting economic advancement?

Starting a business is an exciting adventure, but also a risky business. However, this is less serious than it seems because failure is an integral part of our success. It is from our mistakes that we often learn the most. New attempts are therefore part of a process of learning and discovery, which leads to economic advancement. It is therefore necessary to combat the cliché that bankruptcy is a crime regardless of the cause. Talking about failure to entrepreneurs and highlighting the benefits of a fresh start is therefore an essential step in fostering an entrepreneurial culture.



09. 10. Many entrepreneurs, such as Henry Ford or Walt Disney, knew failure before success - both went bankrupt before embarking on new successful ventures.

Insolvency proceedings, bankruptcy prevention as well as the granting of a second chance are regularly reviewed by many international organisations such as the World Bank or the European Commission. In the "Resolving Insolvency" category of the World Bank's "Doing Business", Luxembourg ranked 90th out of 190 in 2019 with a score of 45.46/100. This score is all the more striking if we compare it with our neighbouring countries. So, while France has 74.08 points, Belgium and Germany have 81.46 and 90.12 points respectively, or about double Luxembourg's. The World Bank's analysis is echoed in the 2019 SBA Fact Sheet & Scoreboard of the European Commission in which Luxembourg ranks 26th in the European Union in the second chance category³. Since 2008, Luxembourg's performance with regard to the "second chance" indicator has steadily deteriorated and the European Commission had already pointed out to Luxembourg in 2016 that the reform of insolvency procedures was more than necessary in order to be able to reduce the cost and duration of such procedures.⁴

In addition, the European Commission's



SBA Fact Sheet highlights that fear of failure far exceeds the European Union average with one of the highest rates in the European Union. Thus, an efficient and modern insolvency procedure is not only necessary to increase the attractiveness of the country through better international rankings, but above all to reduce the fear of failure (which continues to increase) and allow to entrepreneurs who have failed to dare to launch a new entrepreneurial activity⁵. Laurent Kratz, an entrepreneur who has faced failure, explains (see Side Interview): *"Failure is one of the stages of entrepreneurship. A new entrepreneur must realise that there is a 50% chance of failure. Failure, however, is not the end of the world, but an experience on the road to success."*

A modern bankruptcy reform, as provided for in Directive (EU) 2019/1023, would therefore make it possible to better supervise (and protect) both debtors and creditors. The absence of such legislation in terms of bankruptcy makes potential entrepreneurs hesitate (see for example the risk of poverty of entrepreneurs) while the Luxembourg economy needs entrepreneurship as a backbone of society. The

ideal would be for it to take into account restructuring models as practiced in English-speaking countries and as proposed by the European Commission (homogenisation of bankruptcy legislation at European level - loss of competitiveness possible if it is not homogenised).

And now?

The delicate period we are going through will unfortunately highlight the difficulties facing businesses and the unsuitability of the current bankruptcy regime, which is purely curative.

The Luxembourg bankruptcy law is now clearly behind most of the laws of other member states of the European Union who have recently undergone reforms.

In Luxembourg, the only "tools" that can currently be offered to companies in difficulty (the pre- or post-bankruptcy agreement, controlled management and suspension) are cumbersome and complex processes, largely under-used, and fail to reach small businesses which nevertheless constitute the major part of Luxembourg's economic fabric.

"Failure is an experience on the road to success."

3. European Commission, 2020, 2019 SBA Fact Sheet & Scoreboard

4. European Commission, 2017, 2016 SBA Fact Sheet – Luxembourg

5. Global Entrepreneurship Research Association, 2019, Global Entrepreneurship Monitor 2018/2019 Global Report, January



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"An efficient and modern insolvency procedure is not only necessary to improve a country's attractiveness through better international rankings, but above all to reduce the fear of failure."



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In this context, the rapid adoption of Bill No. 6539 relating to the preservation of companies and modernising the bankruptcy law, after 7 years of legislative procedure, should constitute a priority for the government by focusing this project around (i) an increased preventive component making it possible to quickly identify companies in difficulty and aiming to provide them with personalised assistance and support, and (ii) a management liability regime in the event of bankruptcy adapted to exceptional circumstances, not depriving the honest manager, forced to go bankrupt because of the crisis, of a real second chance.

At present, following the latest opinions issued by the professional chambers and the Council of State in 2019, new amendments



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Steve Darné
Co-CEO,
1COM Group

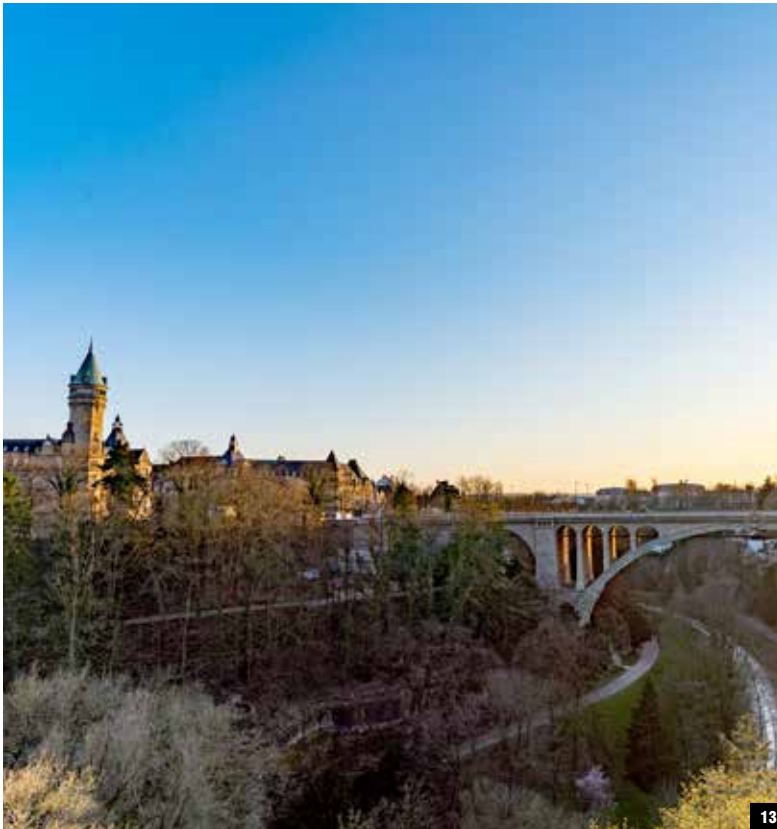
"Bankruptcy should not be viewed as a criminal act, and everyone, if acting in good faith, should have the right to reinvent themselves"

What is your entrepreneurial journey?

I went to the United States for a while, and I came back in 1993 with certain ideas in my head. I simply did not appreciate the fact that, at that time, Luxembourg did not yet have the economic fabric it has now, with international brands on its territory, and that my "American vision" for a company may not have been suitable for the country at that time. I got into it anyway and since I was doing a lot of sport I started a company that manufactured and sold sporting goods. It worked really well - I worked with big international sports brands such as Decathlon - so well that I couldn't keep up. One thing led to another, as I was unstructured and inexperienced, I was unable to find capital to invest in this development and could not hire the necessary staff to follow this growth. Then, also, at the time, orders could not be paid by credit card - when I spoke about it, my interlocutors told me that it would never be done in Luxembourg and the cost of shipping parcels abroad was exorbitant. Then, to add to my bad luck, the warehouse of one of my manufacturers in China burned down with all my stock... In the end, the banks no longer supported me and logically, customers whom I could no longer supply didn't either.

What did you learn from this experience? What tools do you think should be in place to help entrepreneurs who start or fail?

I have learned a lot of things! For example, you can't compete in Formula 1 when you're driving a small car and you have to be realistic about your business and what you can do. You may be young and motivated, but that is not always enough and you have to know how to accept that it is possible to make mistakes and that it is not the end of the world! All great entrepreneurs have failed, and sometimes success comes down to a few things, such as just being in the right place at the right time! Bankruptcy should not be viewed as a criminal act, and everyone, if acting in good faith, should have the right to reinvent themselves. I think that Luxembourg, which wants to be a dynamic country, must take action on this point and get out of its archaic legislative system to provide more support to entrepreneurs who have failed. One could, for example, set up platforms where proposals could be collected to improve the situation and help experts in the field to develop a new framework to remedy it because the tools currently proposed are no longer suitable and this considerably reduces and slows down the productivity of enterprises.



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to this bill are in preparation and should be able to be tabled before the end of this year. Considering a new round of consultations that will have to be carried out once these amendments are finalised, the final adoption of this project before mid-2021 seems unlikely. —

11. In Anglo-Saxon countries, failure is an integral part of the entrepreneurial journey and is seen as the result of an operation that was worth trying.

12. The concept of Fuckup Nights is a worldwide success. These evenings make it possible to play down failure by giving a voice to those who have known it to tell the stories of their "fuck-ups" without any "bullshit".

13. A bankruptcy law adapted to the economic reality of the Grand Duchy has become necessary in order to give people a second chance.