

PRACTICAL GUIDE

NAVIGATING BUSINESS CHALLENGES

Difficulties management, prevention
and resilience in entrepreneurship



ENGLISH

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A Chamber of Commerce publication
in partnership with **MindForest**
March 2024

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* The terms defined in the Glossary are underlined in the Guide.

Editorial

Running a business can be tough and exciting, requiring a mix of skills, including the ability to bounce back. When things get financially tough, entrepreneurs might feel alone or thrown off balance. These feelings are closely linked to the fear of failing and the societal judgment that comes with it. This is not just a problem in Luxembourg; it is felt all over Europe. Usually, society pays more attention to the start of businesses than to how long they actually last. Helping entrepreneurs recover means expecting setbacks and creating an environment that does not shame business leaders for facing challenges.

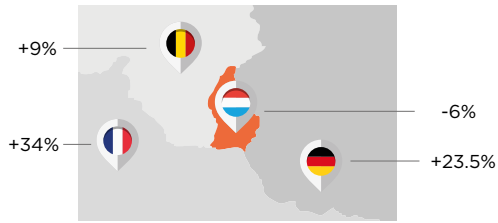
The year 2023 marks a turning point for the Luxembourg ecosystem, with a new approach to insolvency and the long-awaited modernization of bankruptcy legislation, introducing the right to a “second chance” after failure. Among the new preventive restructuring mechanisms, both legal and amicable, conciliation appears to be one of the most promising developments, especially due to its simplicity and flexibility. However, a prerequisite for initiating any preventive restructuring procedures is an objective analysis of a company’s current situation from economic, financial, and legal perspectives. Seeking the support of competent advisors is crucial for company leaders to gain this comprehensive overview and make informed decisions.

Through this Guide, the House of Entrepreneurship aspires to cultivate a proactive mindset in supporting entrepreneurs facing challenges and, more importantly, to destigmatize the entrepreneurial landscape. The objective is to encourage open discussions about difficulties right from the onset of symptoms. Additionally, this Guide seeks to empower entrepreneurs who have encountered setbacks, instilling confidence in them to plan for the future and set the basis for a new and viable project.

The House of Entrepreneurship team

Facts and Figures

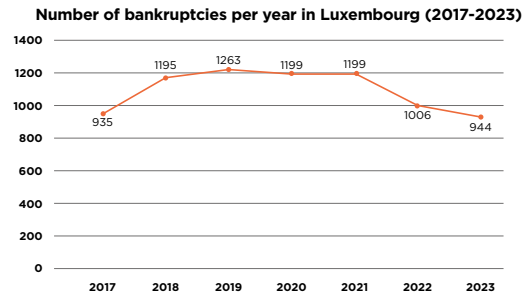
944 bankruptcies in Luxembourg in 2023:
-6% versus 2022



Source: CreditReform 2023

The Covid subsidies and the energy shield still appear to be having their impact. An increase in the number of bankruptcies is anticipated in the coming months as the deadlines for the repayments of advances are approaching.

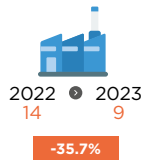
Number of bankruptcies per year



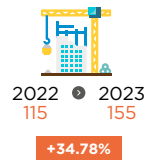
Pre-COVID level: 1229 bankruptcies per year on average in 2018 and 2019.

Bankruptcies by sector

Production



Construction



Services



Retail



Hotels, restaurants, catering



In Europe, the most affected sector is accommodation and food services (+82% in 3 years).
Source: Eurostat

Bankruptcies based on the age of the company

A distinctive feature of the Luxembourg market is a higher number of bankruptcies in companies that have been in existence for more than 5 years in comparison to younger companies. However, the trend is changing: while between 2017 and 2020, the ratio of companies with over 5 years going bankrupt was 76% compared to 24% for younger enterprises, in 2023, bankruptcies comprised 41% from younger businesses.

Number of bankruptcies by age of business



The success of conciliation procedures

In France, 70% of companies that engage in preventive restructuring procedures manage to recover. - (see p.5 / Insights from abroad).

CIP, 2023 (Centre d'Information sur la Prévention des entreprises en difficulté)

Insights from abroad

Like Luxembourg, France and Belgium have set up mechanisms to identify companies in difficulty and the means to provide them with information and support. Germany's laws were reformed in 2021 to apply Directive (EU) 2019/1023 of 20 June 2019 on preventive restructuring frameworks.

In Belgium:



Centres pour Entreprises en Difficulté (CED), are hosted by the commercial courts.

Purpose: to identify companies in difficulty (those who have not been paying their social contributions and VAT for over six months) to ensure that they can continue in business and that creditors' rights are protected; the aim is to encourage business owners to take appropriate corrective measures to avoid bankruptcy.

Services offered:

- intervention of a mediator to assist with business restructuring, to offer advice, and to facilitate dialogue with creditors,
- analysis of the situation, discussions with the entrepreneur, and guidance towards a potential judicial restructuring procedure to obtain a stay on payments by creditors,
- group and individual workshops providing information and legal, tax and accounting advice on the measures to adopt to ensure the viability of the company, and access to a team of multi-disciplinary experts (lawyers, accountants, crisis managers).

In France:

Preventive restructuring cells within the Chambers of Commerce and Industry and the commercial courts.

Purpose: to alert managers from the first symptoms on and inform them about existing procedures.



CIPs (Centres d'Information sur la Prévention des difficultés des entreprises) can be found across France.

Purpose: serving as true "one-stop-shop" for prevention, they bring together all stakeholders capable of informing entrepreneurs about aid and support measures and providing concrete assistance in their challenges:

- financial professionals (accountants, auditors, ...),
- legal professionals (lawyers, commercial judges, judicial administrators, and judicial agents, ...).

www.cip-national.fr

Services offered:

- personal support,
- diagnosis of the situation and discussions with business owners,
- psychological support: a referral to a psychologist if risk factors are identified.

Good to know!

French amicable procedures, namely ad hoc mandates and conciliation, boast a success rate of 70 to 75% according to CIP, thus saving numerous businesses from bankruptcy each year. This serves as a positive indicator for Luxembourg, provided that leaders respond to the initial signals.

Anticipating risks

The informed management of the company on a daily basis is key to being able to detect potential difficulties as early as possible. There are a number of tools and methods available to entrepreneurs to achieve this.

Building your custom dashboard

Implementing a cash flow forecast plan

Objective:

- gaining visibility into cash needs for the coming months and understanding working capital,
- anticipating significant payments, slow periods with reduced activity and cash inflows.

Advantages:

- avoiding default on salary payments, social and tax authorities, and suppliers, while tracking cash inflows and outflows month by month.

Knowing and monitoring your breakeven point

Objective: Understanding where value is created, managing expenses.

- calculate the minimum volume of turnover required for breakeven,
- reduce fixed and variable costs to lower the cost price and increase the gross profit margin,
- ask your accountant to prepare monthly indicators so that you can track the company's financial situation.

Understanding and interpreting profitability ratios

Objective: to compare different fiscal years and benchmark performance against other companies in the same sector, on the basis of ratios for gross margin, value added, operating profit, etc.

Establishing a meticulous monitoring of public debts

Objective: to remain up-to-date with social security contributions, direct contributions and VAT payments, in order to avoid missing any payments due to public authorities. To react to the first reminder and negotiate any necessary payment extensions.

Anticipate

- recruitment requirements based on the anticipated workflow,
- stock management requirements,
- changes in suppliers and partners.

Get trained and challenged

Group coaching sessions: "Boost your business"

analyses your professional situation and discover new ways to make your company fit for the long term by attending group and individual coaching workshops.

Individual coaching: "LAUNCH" programme

provides opportunities to challenge key aspects of managing a young company (individual coaching and ongoing training), offer training and networking events.

House of Entrepreneurship webinars:

how to bounce back as an entrepreneur?

Staying alert to early-warning signs

Listen to employees, clients and peers:

operating teams on the ground who know the market are generally the best source of information.

Once you have identified signs of weakness:

- name the risks and avoid a state of denial (see p.8 / Self-assessment tool).
- contact competent partners to help analyse signs of weakness (accountants, lawyers, bankers or even colleagues or counterparts).

Examples of early-warning signs

Financial
Cash flow shortage, occasional or recurring deficit.

Workforce
Conflicts with key employees or partners.

Market- and operation-related signs
Loss of a major client, technological disruption by a competitor.

Regulatory
Emergence of constraints, escalation in compliance costs.

Avoiding Isolation

Never confront a threat or difficulty alone.

Self-assessment tool

It is not always easy for an entrepreneur to step back and objectively assess the health of their business. This self-diagnosis helps identify warning signs that require action before the situation worsens. Its purpose is to raise awareness for the entrepreneur and does not replace the consultation of a qualified expert.

Give an honest response to the following statements by indicating how relevant they are to your situation with a score of 0 to 5 (0 = not at all/hardly, 5 = very):

Financial difficulties

- Clients don't pay or pay late
 0 1 2 3 4 5
- My business has cashflow issues
 0 1 2 3 4 5
- My business does not have the funds it needs to invest
 0 1 2 3 4 5
- My business cannot access credit
 0 1 2 3 4 5
- My business is accumulating debt because its fixed monthly costs are higher than its income
 0 1 2 3 4 5

Operating difficulties

- My business has lost some major clients
 0 1 2 3 4 5
- My business has lost some major suppliers
 0 1 2 3 4 5
- My business faces higher competition
 0 1 2 3 4 5
- My business is seeing a slowdown following changes in the market
 0 1 2 3 4 5
- The products/services offered by the business no longer seem to meet the requirements of the market
 0 1 2 3 4 5

Managerial difficulties

- There are conflicts between partners/shareholders
 0 1 2 3 4 5
- My business has lost some key employees and/or managers
 0 1 2 3 4 5

Legal difficulties

- Legal proceedings have been instituted by one or more public creditors due to overdue liabilities¹
 Yes No
- My business has received reminders from the authorities for public-sector liabilities that are one month or more overdue
 Yes No
- My business has received a fine for the late payment of tax or social security contributions
 Yes No

If you replied YES to at least one question: Contact the House of Entrepreneurship immediately to analyse your situation and look for solutions.

Administrative difficulties

- My business is not up-to-date with its RCS filings (balance sheet, corporate info) Yes No
- My business is not up-to-date with its tax returns (VAT, taxation) Yes No
- My business has already received one or more reminders for payments due to public-sector creditors¹ which we were unable to honour
 Yes No

If you replied YES to at least one question: Contact the House of Entrepreneurship immediately to analyse your situation and look for solutions. You must remedy this situation quickly or you may be subject to fines for not filing the required documents with the authorities.

¹ Public-sector creditors: CCSS (Joint Social Security Center) for social security contributions, AED (Registration Duties, Estates and VAT Authority for VAT, and ACD (Luxembourg Inland Revenue) for tax

Add up your scores:

If you scored less than 12: few signs of weakness. Continue to remain vigilant and retake the test regularly.

If you scored between 13 and 24: some signs of weakness. Analyse each point to see how you can remedy each situation.

If you scored between 25 and 36: rather high signs of weakness. Seek help to get to grips with the issues and put an action plan in place.

If you scored between 37 and 48: very high signs of weakness. Seek help on preventive measures as quickly as possible.

If you scored more than 48: the situation requires immediate attention. Find out what mechanisms can be activated as quickly as possible.



Entrepreneurs are encouraged to contact the **House of Entrepreneurship** regardless of the outcome to learn about opportunities for business development, prevention and/or resolution of difficulties, and to be guided accordingly.

Responding to initial challenges

Early diagnosis is one of the essential factors for revitalizing a business or initiating a fresh start, as it provides room for corrective actions.

If the results of the self-diagnosis reveal weaknesses, and you have already identified challenges your business is facing, it is crucial to determine their origin and attempt to address them at the earliest stage, possibly with the support of professionals such as an accounting firm, lawyer, entrepreneur network, or mediator (see p.20 / Seeking help).

Actions can be taken at the entrepreneur's level to steer things in the right direction.



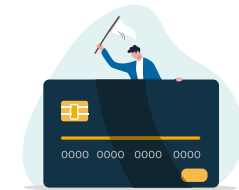
Boosting the margin and improving cash flow

- Terminate any unprofitable partnerships
- Pursue outstanding payments
- Request advances from clients
- Pay bills on a monthly basis



Reduce fixed and variable costs

- Move to premises where the rent is lower
- Renegotiate agreements with service providers (IT and other subcontractors)
- Reduce the payroll (hiring freeze, early retirement incentives)
- Close any unprofitable business lines



Renegotiate bank debt

- Meeting with your bank advisor, discussing temporary challenges, and exploring possible solutions with them (e.g., a credit line). Prior to this meeting, carefully document the causes of these challenges, especially those revealed by your self-diagnosis (see p.8 / Self-assessment tool)
- Meet with mutual societies offering guarantees for artisans and retailers to discuss a bank guarantee and/or the National Credit and Investment Company to identify co-financing possibilities.

Renegotiate terms with suppliers/ private-sector creditors

- Get their agreement to a delay, rescheduling or temporary suspension of payments

Negotiate a rescheduling of payments with public creditors

- Get the support of a conciliator if necessary (see p.14 / Prevention mechanisms)

And above all -

take good care of yourself and your mental well-being.

We often see employee burn-out and business owners - under constant pressure and bearing heavy responsibilities - are not spared. Resilience and perseverance in the face of adversity are their best asset.

Avoid staying alone with doubts and make sure you do not fall into the "7 Ds" spiral that threatens entrepreneurs who are facing difficulties:

- Denial
- Personal Debt
- Bankruptcy Declaration
- Delocation
- Divorce
- Depression
- Death risk

Ask for help. Get a meeting at the House of Entrepreneurship, which can draw up a diagnosis and steer you in the right direction.

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Managing difficulties (1/2)

There are mechanisms available to businesses at the first hint of difficulties and before they become insolvent.

The aim of all of these mechanisms is to ensure the preservation of all or part of the assets and/or activities, providing entrepreneurs with the assistance they require, whilst allowing them the maximum degree of autonomy.



Restructuring all or part of the assets or businesses by means of an amicable agreement with all or at least two creditors

A debtor can propose an agreement to (at least two) creditors to restructure the company's assets or businesses (e.g. by debt rescheduling or forgiveness, payments in kind, transfer of operations, ...), without the need for any legal proceedings. This amicable agreement will be approved by the courts, thereby making it legally binding. Creditors cannot be held liable for participating in an amicable agreement.

Signs of weakness that are the precursors of corporate difficulties are monitored by the Difficulty Assessment Unit of the Ministry of the Economy.

Conciliator

In a legal or out of court restructuring, the debtor may ask the judge to appoint a conciliator. The conciliator will provide technical assistance with management, negotiation and procedural issues, ... (see p. 20 / Seeking help)

Court-appointed expert

If need be, the debtor can request the assistance of a court-appointed expert with a judicial restructuring procedure. The court will determine the role of any such expert based on the debtor's request. If the debtor is assisted by a conciliator, the court may restrict or end the conciliator's role (see p.20 / Seeking help).



Objective: amicable agreement

The debtor can apply to the court for a stay on payments, to provide the time needed to negotiate an amicable agreement with all or at least two creditors.



Objective: collective agreement with creditors on a restructuring plan

The debtor will prepare a reorganization plan aimed at providing a reasonable outlook to avoid insolvency and ensure viability. Creditors may vote for or against its adoption, and in certain cases, the plan may be imposed on dissenting creditors.



Objective: transfer to one or more third parties of all or part of the assets or activities by a judicial representative

This transfer may be ordered by the court in order to ensure that certain assets or businesses are safeguarded, whether the debtor consents, or in certain circumstances, at the request of the public prosecutor or following the application of a creditor.

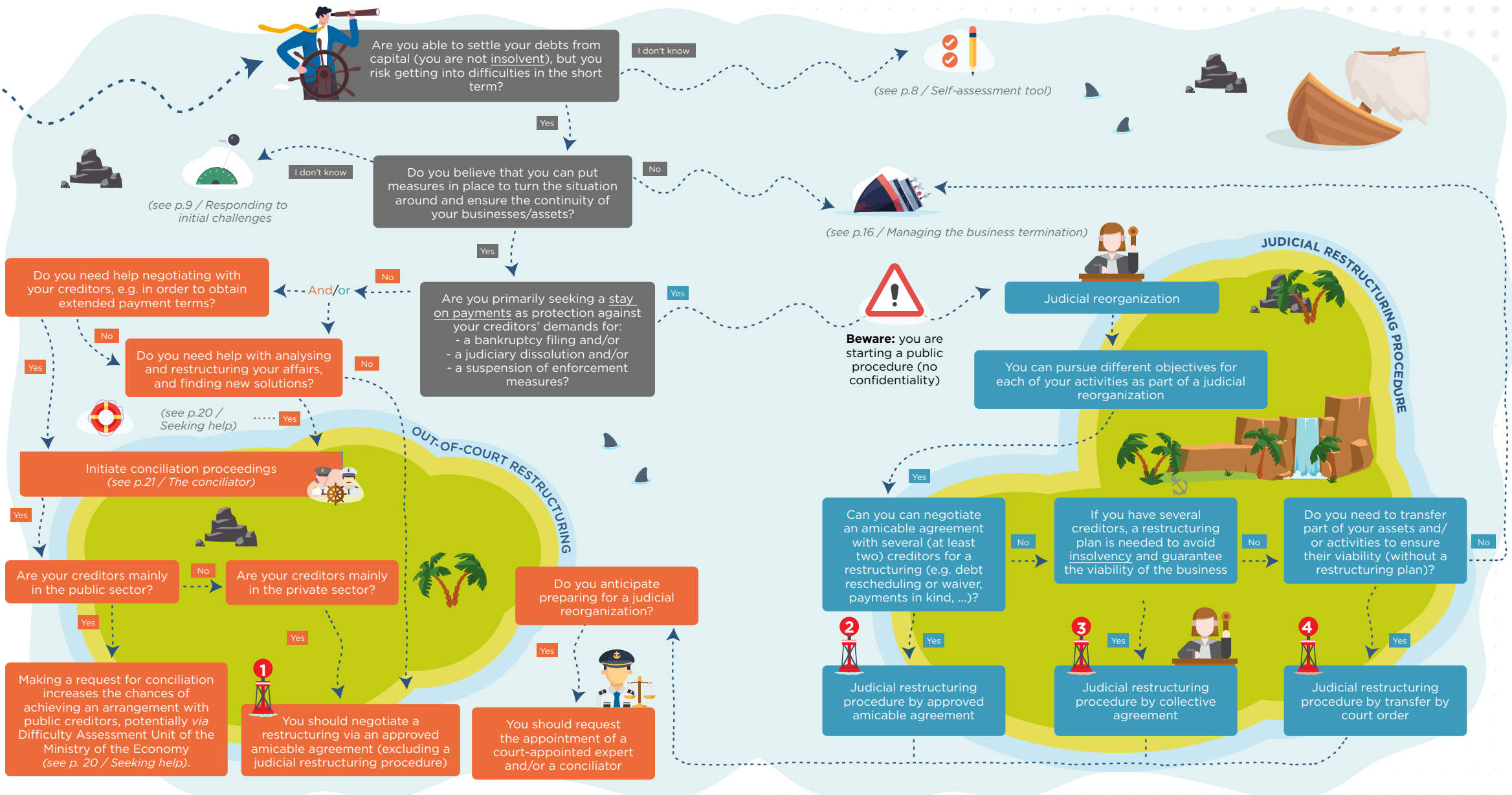
Judicial reorganization

The entrepreneur can pursue different objectives for each business activity or part of an activity in a judicial reorganization, and can request a change to the objective of the restructuring at any time during the stay on payments.

Stay on payments

The purpose of opening a judicial reorganization is to obtain a stay on payments. During a 4-month period (renewable for up to 12 months) the debtor cannot be declared bankrupt or placed in judicial or administrative dissolution, and the enforcement of claims against moveable and immovable property is, in principle, suspended.

Managing difficulties (2/2)



Prevention mechanisms

PROCEDURE	Appointment of a conciliator	Restructuring procedure by amicable agreement	Judicial restructuring procedure
Initiator of the procedure	Debtor	Debtor	Debtor
Competent authority for receiving the request	Minister of the Economy	Creditors + enforceable by court approval of the agreement	Courts
Principle	Appointment of a conciliator whose role is set by the Minister	The debtor makes a proposal to creditors	<u>Stay on payments</u> in order to conclude an amicable agreement, obtain the agreement of creditors to a restructuring plan, enable the transfer by court order of all or part of the assets or activities
Objective	To prepare and promote the conclusion of an amicable agreement, the agreement of creditors to a restructuring plan or the transfer of assets/activities	To restructure all or part of the assets and/or activities	To safeguard, under court control, the continuity of all or part of the assets or activities of the business
Conditions for initiating the procedure	The appointment of a conciliator can be requested at any time	At least two creditors must be party to the agreement	The company's existence is in imminent or foreseeable danger (<u>bankruptcy</u> does not prevent the procedure being initiated or pursued)
Debtor's dispossession	NO	NO	NO Except in the case of serious and proven misconduct by the debtor: the court may, at the request of any interested party or the state prosecutor, replace the debtor by a provisional administrator for the period covered by the <u>stay on payments</u>
Comments	The debtor can suggest the name of a conciliator	Restriction of the liability of creditors participating in the amicable agreement: they cannot be held liable simply because the amicable agreement did not guarantee the continuity of all or part of the business Confidential procedure (the ruling is not published / subject to notification) and third parties are informed solely with the debtor's express agreement	A certain number of documents must be attached to the request to the court, specifically: a summary of the facts on which the request is based, the latest annual reports, the accounting situation (assets and liabilities), a recent income statement, a forecast of estimated income and expenditure for the period of the requested <u>stay on payments</u> , ... A court-appointed expert may be requested by the debtor or by a creditor/interested third party: assistance for the debtor but no dispossession

Testimonial | Nicolas Bernardy Attorney

Mr Bernardy is a lawyer specialised in corporate and insolvency law. He works for Brucher Thieltgen & Partners supporting companies that are experiencing difficulties or are in liquidation. Here he summarises what will change for businesses with the reform of insolvency law in Luxembourg.

What major advances does this law introduce for companies?

This law sends a strong signal and marks a real change in policy, highlighting the government's objective of supporting businesses and doing everything possible to protect assets (in particular, jobs). The conciliator – an independent expert – will play a key role in this process, by re-establishing dialogue with creditors and re-establishing trust. The business must request the appointment of a conciliator by the Ministry of the Economy, from the list of conciliators that is currently being drawn up (see p.20 / Seeking help).

Will this law result in a reduction in the number of bankruptcies?

Implementation of these measures will provide some breathing space for companies and encourage creditors to get around the table to find a negotiated solution. By placing itself under the protection of the new law, a business can take advantage of a stay on payments and will not be under pressure from imminent bankruptcy. It may also be used – to some extent – to protect a business's assets and ongoing contracts from disgruntled suppliers looking to end the contractual relationship.

The business, potentially with the help of a conciliator or court-appointed expert, can choose the most appropriate approach based on its situation:

- an amicable agreement with some creditors either as part of or outside of a judicial restructuring procedure (an agreement outside of such a procedure could be negotiated on a confidential basis, but the debtor would not benefit from a stay on payments),
- a collective agreement with all or the majority of the company's creditors, or
- a transfer by court order of a part of the business's assets, which would otherwise have been liquidated at a loss in the event of bankruptcy, in order to extract value from these where possible. In this case, however, a business that has sold a major part of its assets/activities will most likely finish in bankruptcy or liquidation.

We do not yet have sufficient experience to judge how efficient these measures will be, but this law has been based on legislations in France and Belgium, which have extensive experience of detecting and supporting companies experiencing difficulties and have proven the efficacy of such measures.

However, this type of procedure is certainly doomed to failure if it is activated by a business that is simply hoping to gain some time and is not really willing to implement the measures necessary to keep the operations going.

Small companies generally have debts to the public sector such as social security contributions (CCSS), VAT and direct taxes. Does the conciliation process also apply to these debts?

Yes, and it is highly likely that the authorities will be inclined to play the game, especially if a conciliator has been named by the Ministry of the Economy.

Based on what criteria can a company choose its conciliator and what costs are involved?

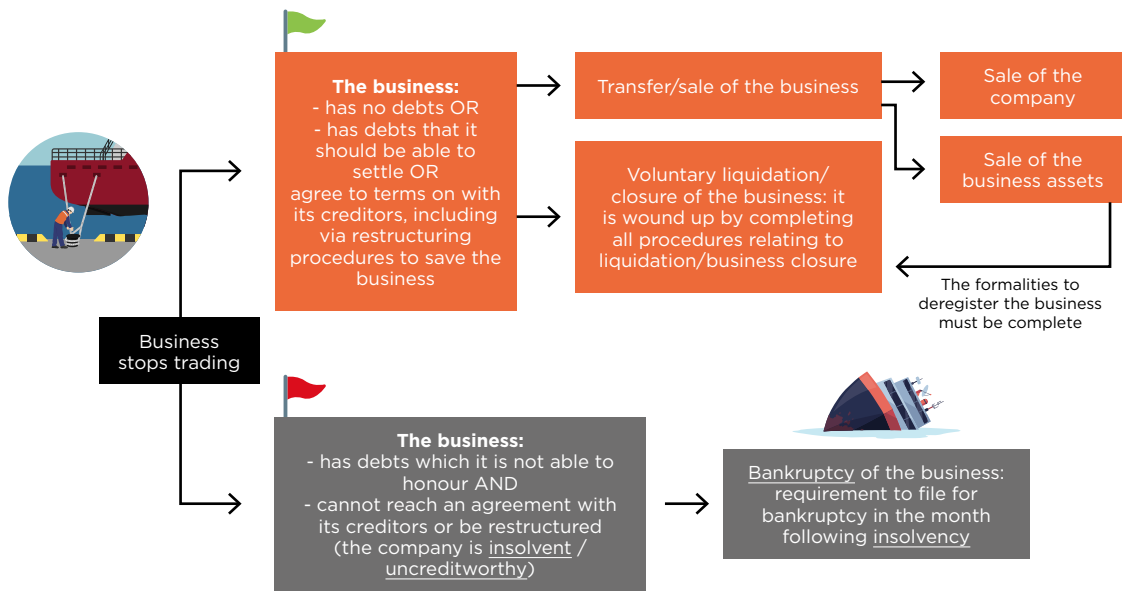
The choice must be made from the list of conciliators and court-appointed experts (see p.20 / Seeking help), who must have proven experience and be eligible to act in this very important role of an expert advisor who is capable of re-establishing dialogue with creditors. This list will include legal experts (lawyers) and financial experts (accountants or management consultants). Entrepreneurs will therefore have to assess which type of professional is best suited to helping them, based on their specific needs and the difficulties they are facing. With regards to the cost, we assume that conciliators will charge on an hourly basis. However, we do not yet have any experience of the structure for such fees.



Managing the business termination

It may be necessary to terminate a business for a number of reasons. The termination might be based on a voluntary closure due to a personal decision of the entrepreneur, or due to market and trading conditions which are no longer optimal for the operations. Closing the business may also be made necessary due to the economic situation. In any case, there are a series of procedures to be followed and formalities to be completed in order to close down a business. Analysing the business's situation, in particular, its ability to settle its debts prior to closure, will determine the procedure to be followed.

Terminating a business: global situation vs. available options



Useful info: filing for bankruptcy

The manager is legally required to file for bankruptcy with the clerk of the relevant district court in the month following insolvency. If this is not done within the required deadline, the court may open bankruptcy proceedings upon application of a creditor, and the manager's authority may be lifted for failure to comply with this obligation to file for bankruptcy.

Bankruptcy is declared by court judgement. The bankruptcy of the business is published on the website of the Luxembourg Trade and Companies Register (www.lbr.lu) thus rendering this information

public. An administrator and a bankruptcy judge are appointed. The business management is relieved of its management duties, which are assumed by the administrator, who takes control of the business in order to liquidate it.

The consequences of the bankruptcy procedure for the manager may vary, depending on the legal form of the business (company or sole trader), their management role, and the existence of debts to public creditors.

Testimonial | Personal care service company, beauty/wellness sector

You launched a new personal services business just before the COVID crisis. It was your first business, together with four other partners with varying levels of experience. What challenges did you encounter?

We signed our lease in February 2020, paying a guarantee and the first month's rent in advance. In mid-March, the healthcare crisis, which we hadn't anticipated, caused hold-ups that made starting the business more complicated. The first challenge was to successfully negotiate a temporary suspension of rent payments for several months. Then we had to find workers to renovate the premises - with the country in full lockdown.

We had planned to open in May, but finally opened our doors on 1 October. By that time we had a deficit of EUR 100,000, which included rent payments and the cost of renovation materials and labour. During this uncertain period, there started to be tensions between the partners, and our initial enthusiasm had also waned somewhat.

Ultimately, thanks to the cash reserves of two of the partners who were already business owners, and a strong marketing strategy, we reported decent turnover figures for the first month, but these just about covered the costs of the business. The challenge was therefore to be profitable.

Your partners tried a few different strategies during the first year after launch and finally closed the business voluntarily in 2021, whereas you had already decided to return to salaried employment. With the benefit of hindsight, what would you have done differently to prevent the difficulties?

I had kept my job in parallel to starting the business and I quickly decided to sell my shares as I didn't have any additional funds to inject into the project, which no longer seemed viable to me given the cost base. My vision wasn't the same as that of my partners who had bigger ambitions.

With the benefit of hindsight, I believe that we should have made greater cuts to fixed costs from the start or reduced the payroll and changed location in the early months. I would also have looked for help from people in the field. Lastly, I would also have ensured that the roles of each of the partners were better defined from the start, as well as the process for taking strategic decisions.

Like many entrepreneurs starting their first business, you made some errors. But you were able to learn from these - what were the main lessons?

Firstly, it's important to say that I don't believe that an error is really a failure - it's an opportunity to learn. This experience provided me with practical

experience of being an entrepreneur, a certain know-how and the opportunity to put my creativity to work. It also showed me the importance of establishing a framework for taking stock on a regular basis, rather than remaining focused on the day-to-day business. I discovered that it is key to regularly check that all partners are on the same page. I also understood that it is essential to start smaller and leaner, and to rely on facts rather than intuition when taking decisions.

So if I had my time over, I would try again, but with other partners and different financial forecasts.

Lastly how do you think that failure is viewed, and how did your family and friends react?

It was difficult to talk about closing the business to start with. Today, with a bit of distance, I can talk more openly about this experience, even if it's still a bit raw and there are some regrets that we couldn't make the business work.

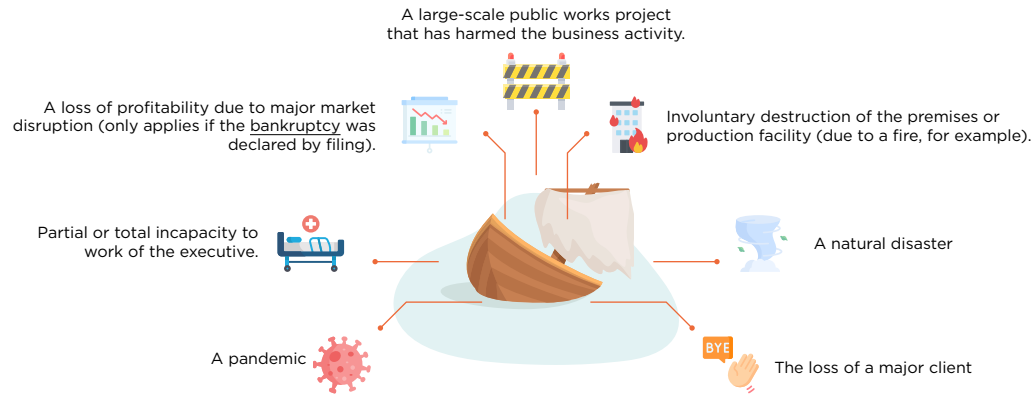
My friends and family were rather kind, I didn't really feel that they were judging me. As all debts were settled before liquidation, all partners could start up in business again, although the capital we invested at the start was lost. Practically all of them continued as entrepreneurs on a full or part-time basis, so the motivation is still there, even after failure.



Bouncing back after failure

The latest reform of the right to establishment (*) introduces the principle of a “fresh start” when an entrepreneur applies for a new business permit.

This new chance only applies if the bankruptcy results from one of these 7 causes:



If none of these seven reasons can be claimed, the entrepreneur must follow the usual procedure: for entrepreneurs not falling under the new chance scheme, it is possible to start a new business providing that a repayment plan has been negotiated with public creditors and that the entrepreneur is not subject to a court ruling that prohibits establishing or managing a company (no loss of professional integrity).

Furthermore, the Law no longer systematically requires attaching, during the request for a fresh start, a plan for settling any remaining public debts negotiated with public creditors, if the amounts owed do not exceed certain thresholds:

	The amount of VAT due	} must not exceed 1% of the net amounts actually paid during the previous five financial years
	The amount of direct taxes due	
	The amount of social contributions due	} must not exceed four months of contributions, calculated on the basis of an average for the previous 24 months

The Minister for the Economy takes a decision on whether to grant a business permit based on the aforementioned criteria, proof of the viability of the future business submitted by the applicant, and the ability to repay remaining debts. The decision is based on an advisory opinion issued by the new chance commission, which includes the Ministry of the Economy and public creditors, favoring close cooperation between all involved parties.

(*) The Law of 26 July 2023 amending the Law of 2 September 2011 regulating the access to the professions of craftsman, trader, manufacturer and certain liberal professions.

Testimonial | Zev Siegl

Co-founder and serial entrepreneur

Zev Siegl is best known for co-founding Starbucks in 1971 with two partners. It was the world's 1st coffee bar chain. He sold the company to his partners ten years later, to create other startups. His taste for entrepreneurship even earned him the nickname “Mr. Start-Up”. In 2003, he finally decided to leave the world of entrepreneurship to share his experience with other entrepreneurs by joining the federally funded Washington Small Business Development Center (WSBDC), where he has advised over 500 individual entrepreneurs and SMEs over the course of 8 years. Today, Zev Siegl speaks at numerous conferences around the world on entrepreneurship related topics. In 2019, he was hosted by the House of Entrepreneurship during Entrepreneurs days.

Why did you decide to sell your shares and leave Starbucks?

When I made this decision, Starbucks had 200 employees. I decided to leave the company because I wasn't interested in management. I realised that my strength lay in my ability to turn ideas into businesses, but that other people were better placed to develop and manage business on a day-to-day basis. It's very important for an entrepreneur to know exactly what he can bring to his company and what he enjoys doing. In my experience as an advisor to companies, I've noticed that the founder often stays too long: often the founder is not equipped to take the company to the next level.

Some of the companies you founded eventually closed their doors. What lessons have you learned from them?

It's very important to understand and learn from your mistakes, so as not to repeat them in your next venture. In the case of Peerless Pies, which manufactured and sold cakes, and closed its doors 4 years after its creation, the problem was the lack of ability to attract qualified bakers combined with a lack of tight control over waste. We dissolved the company through Chapter 11. In the United States, you have Chapter 11 (continue working without paying bills - lenders, vendors, ... work out a deal—where a judge decides based on a plan on how to proceed), or opt for Chapter 13, signaling the end of the company. Bankruptcy under Chapter 13 is very costly and stressful, but it allows you to write off your debts and start afresh.

Generally speaking, how is bankruptcy experienced in the United States? Are you aware of any cultural differences from the way bankruptcy is experienced in Europe?

In the United States, the entrepreneur who has gone bankrupt is not seen as a pariah. They can continue to live and create new businesses. In high-tech, venture capitalists even look favorably on an entrepreneur who has already failed, because it's important to them that the person has lived through the experience and learned from it.

They will look closely at the role the entrepreneur played in this context: how hard he worked to save the company, how ethically and responsibly he behaved.

A few years ago, you spoke at a conference organized by the Luxembourg Chamber of Commerce. What was your view of the Luxembourg ecosystem at that time?

I was very impressed by the Luxembourg ecosystem, which is growing fast, and so welcoming to people from abroad who want to come and work here. I often encourage entrepreneurs to look at Luxembourg.

What mindset do you believe is essential for an entrepreneur facing bankruptcy to adopt, enabling them to bounce back and embark on a new adventure?

The best advice I can give them is:

- take advice from experienced people working in the same sector, such as consultants, attorneys, turnaround specialists.
- be open to new approaches proposed by these experienced people
- be prepared to make hard decisions
- take care of yourself to get through a difficult period on a personal level, through exercise and meditation

You've advised and inspired hundreds of business leaders and would-be entrepreneurs. What are the main challenges they face?

Entrepreneurs are full of enthusiasm and believe in their products, but they often share the same shortcomings:

- They don't know enough about financial management. They don't know how to raise funds and how to forecast.
- They have a lack of respect for competitors
- They are often insufficiently prepared for meetings with potential investors.

To compensate for these shortcomings, it's vital for them to surround themselves with the right people to form a complementary team. When we founded Starbucks, we were 3: a startup founder, a finance expert and a marketing expert.

Seeking guidance?



The Luxembourg Chambers of Commerce and Skilled Crafts are by your side from the first signs of difficulty, to assess your situation with you and provide guidance.
www.cc.lu | www.cdm.lu

During the preventive phase



Management or chartered accountant (or fiduciary): works alongside the company and assists with declarations (VAT, tax, social security, mandatory financial publications). They can help the manager to better assess the health of their company on a regular basis, in particular, by putting in place a dashboard of key performance indicators for the company's finances. Although an accountant is a key partner, the entrepreneur must also be in a position to understand for themselves the information that is presented to them.



Bank advisor: knows their client's debt and cash levels. They can suggest other professionals who can help the entrepreneur, notably the Chambers of Commerce and Trade or companies that provide guarantees. Having a good relationship with your banker is important, as they can provide you with payment facilities, loans and higher borrowing limits during temporary difficulties.

During the corrective phase



Conciliator: helps the entrepreneur to understand the situation, restructure the business and find solutions. If relations are strained, the conciliator can facilitate dialogue with creditors with the aim of arriving at an amicable agreement or – depending on the situation – getting creditors to agree to a stay on payments, in order to put in place a restructuring plan or a plan to transfer the businesses.



Ministry of the Economy: is responsible for identifying businesses in financial difficulty at an early stage and alerting them, so that they can find out about potential restructuring measures.

Evaluation unit for troubled companies of the Ministry of the Economy: is composed of representatives of AED (Indirect Tax Authority), ACD (Direct Tax Authority), CCSS (Joint Social Security Center), and the Ministry of the Economy; its aim is to form an opinion on whether a bankruptcy filing is appropriate.



Court-appointed expert: a sworn expert appointed by the judge presiding over the district commercial court, requested by the state prosecutor or any other interested party to intervene if business continuity is threatened by the gross misconduct of the entrepreneur. A court-appointed expert may also be nominated at the request of a debtor who is in need of assistance.



Temporary administrator: this is an expert appointed by the court on a temporary basis, to guarantee the management of a company and to attempt to resolve the crisis that has motivated their appointment.



During the restructuring phase

Court/judge: examines the business's situation, decides on adequate procedures, approves any amicable agreement between the debtor and creditors, approves the judicial restructuring procedures proposed by the conciliator, or the business closure, where applicable.



During bankruptcy proceedings

Administrator: the role of the administrator is to ensure the equal treatment of the creditors of the bankrupt business by organising the sale and equitable distribution of its assets in accordance with the provisions of Luxembourg's Commercial Code.

During the recovery phase

The new chance commission: is composed of representatives of AED, ACD and the Ministry of the Economy; its aim is to form an opinion on the appropriateness of offering a second chance with the grant of a business permit. Business permits are granted by the Minister responsible for the economy.



offers a special free guidance programme for anyone setting up a new business after a failure, especially under the fresh start scheme.



More information in the leaflet for business creators.

About conciliators

They are independent professionals who must have proven skills in the key areas of business restructuring, accounting, corporate law, negotiation and intermediation. They may be a lawyer, insolvency administrator, auditor, accountant, ...



Their name must appear on the **list of conciliators** and court-appointed experts drawn up by the Ministry of Justice. They are appointed by the Ministry of the Economy to guide businesses in difficulty through existing procedures.

What are their fees?

As the start of 2024, date of issuance of the present guide, the fee schedules have not yet been established (hourly fee or flat fee). The costs for the services of the conciliator are fixed by mutual agreement with the business owner.

What is the role of a conciliator?

Depending on the situation, the conciliator's role is to:

- Provide independent and informed advice to the business owner
- Mediate between the business and its creditors to negotiate deadlines for payments or offsets
- Prepare an amicable agreement with creditors
- Ensure that the approved amicable agreement is properly executed
- Prepare a restructuring plan
- Prepare an asset transfer plan
- Act as intermediary between the business and the court, which will rule with consideration for the recommendations of the conciliator

Pitfalls to avoid



Sticking your head in the sand, pretending everything will be fine and thinking you will escape unscathed

- Identify the signals by:
 - listening to your employees and experts
 - calling on those with the skills to analyse any signs of weakness
- React rapidly and address the root of any problems, do not be too optimistic about a swift return to happy days
- Respond to any legal summons

Steering the sheep alone

- Make sure you are surrounded by competent partners who will help you to make the right decisions and will listen to you and understand your issues.
- Ask for help.

Believing the court is there to punish you

- Everyone involved in the ecosystem of preventive restructuring is there to help, support and guide companies facing challenges (see p.20 / Seeking guidance).

Believing that there is no way out

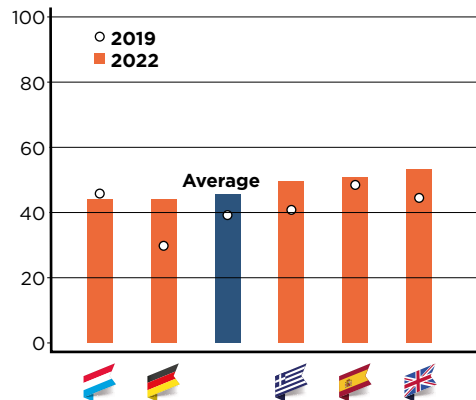
- Use the full range of tools available and rely on professionals in the sector (lawyers, fiduciaries, conciliators, judges, ...).

Fear of failure, the primary enemy of entrepreneurial intention

Based on the 2022/2023 report of the Global Entrepreneurship Monitor Luxembourg (GEM), 44% of the population have identified a business opportunity and believe that they have the necessary skills but are held back by the fear of failure. This figure has been stable since 2019 and is in line with the European average.

This fear in Europe has its source in socio-cultural factors. Across the Atlantic, the relationship to failure is rather different - there they believe that failure breeds success. (See p.19 / Testimonial of Zev Siegl)

You see opportunities but will not launch a business due to the fear of failure



Source: 2019 and 2020 data of the GEM Global APS. Proportion of 18- to 64-year-olds who agree with the statement.

Glossary

The explanations below are not legal definitions but are practical definitions to help you understand the terms used in this Guide.

Accounting terms

Turnover: the total amount of products and/or services sold by a business. It is generally calculated excluding taxes (excl. VAT), also called net turnover.

Working capital requirement: also called financing or cash requirement, it refers to the amount of cash a business needs in order to finance the timing differences between cash inflows and outflows over a given period.

Fixed costs (also called structural costs) **vs variable costs** (also called operating costs): fixed costs are stable whatever the level of business in a business (e.g. rent, subscriptions, ...). Variable costs change in line with the level of business activity (e.g. raw materials, transportation costs for goods, ...). Knowing the level of these costs means that you can calculate the breakeven point and identify the major cost positions, with a view to potentially reducing them.

Direct vs indirect costs: direct costs can be immediately allocated to the cost of a product or service without further calculation (raw materials, packaging, ...). Indirect costs need an interim calculation to determine how much should be allocated to a specific product or service (rent, electricity, ...).

Cost price: the sum of direct and indirect costs involved in the production of a single product or service.

$$\text{Cost price} = \frac{\text{Total direct and indirect costs}}{\text{Quantity of products or services}}$$

Gross profit: the amount remaining after deducting direct costs from turnover. Gross profit can be calculated as a ratio:

$$\text{Gross profit margin} = \frac{\text{Turnover} - \text{direct costs}}{\text{Net turnover}} \times 100$$

Breakeven point: the point at which net turnover covers all costs (direct and indirect)

$$\text{Breakeven point} = \frac{\text{Fixed costs}}{\text{Gross margin} / \text{net turnover}}$$

Profitability ratios: the profit and loss account is broken down into different positions in order to distinguish between production, costs, taxes, ... When these positions are expressed as percentage ratios, they provide a better understanding of the structure of costs and income, in order to improve these ratios, compare them over a number of years, and benchmark them against peers

Legal terms

Insolvent/insolvency: inability to pay debts that are immediately due (note that if creditors accept to postpone the payment date or to stagger payments, the business can avoid insolvency).

Uncreditworthy: if you have no cash and no access to new cash (e.g. by selling assets, recovering client debts, or by access to credit).

Bankruptcy: when you are insolvent and uncreditworthy.

Stay on payments: a freeze on all claims and recovery procedures by creditors as part of a judicial restructuring procedure. The business has the time to negotiate an amicable agreement or implement restructuring measures, without the risk of creditors filing for its bankruptcy, or seeing its contracts broken.

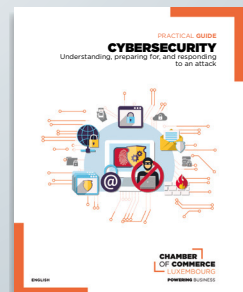
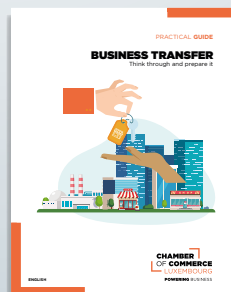
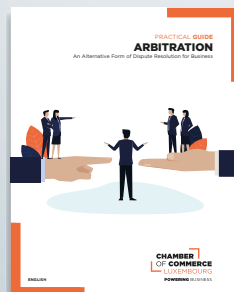
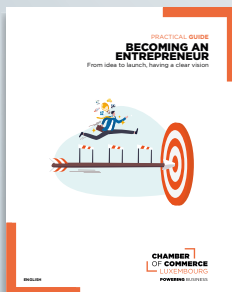
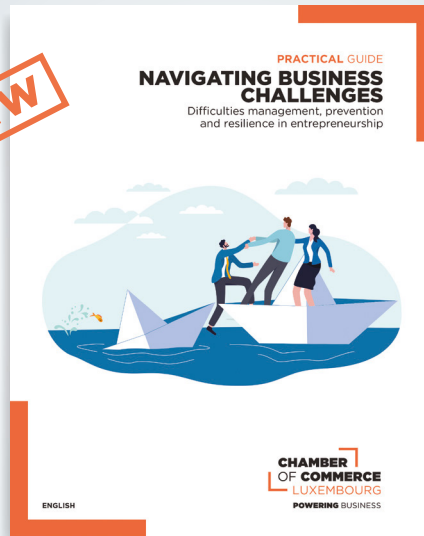


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