Belgium

Rescue procedures in insolvency

Phase	Book XX of the economic code 'Insolvency of Enterprises' of 11 August 2017; Act of 27 May 2013 to modify different laws with regards to the continuity of companies
Native name	Wet houdende invoeging van het Boek XX van economisch recht 'Insolventie van ondernemingen' 11 August 2017/Loi portant insertion du Livre XX dans le Code de droit économique 'Insolvabilité des entreprises', 11 August 2017; Loi relative à la continuité des entreprises; Wet van 27 mei 2013 - Wet tot wijziging van verschillende wetgevingen inzake de continuïteit van de ondernemingen/Loi de 27 Mai 2013 - Loi modifiant diverses législations en matière de continuité des entreprises
Type	Rescue procedures in insolvency
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Article

Whole law De Wet van 7 juni 2023 tot omzetting van Richtlijn (EU) 2019/1023 van het Europees Parlement en de Raad van 20 juni 2019 betreffende preventieve herstructureringsstelsels, betreffende kwijtschelding van schuld en beroepsverboden, en betreffende maatregelen ter verhoging van de efficiëntie van procedures inzake herstructurering, insolventie en kwijtschelding van schuld, en tot wijziging van Richtlijn(EU) 2017/1132 en houdende diverse bepalingen inzake insolvabiliteit.

Description

Book XX of the Economic Law Code, entered into force on 1 May 2018, replaced the Act of 8 August 1997 on Bankruptcies and the Act of 31 January 2009 on the Continuity of Undertakings. The scope of application of Book XX of the Economic Law Code has been extended to include all enterprises, the debtor being defined as:

- any individual who independently exercises a professional activity;
- any legal entity;
- any organisation without legal personality.

With these changes independent liberal professionals, farmers, not for profit organisations, foundations, and trusts, are included in the scope of the law. The law does not apply in cases where the legal person has a public law entity status or is a natural person.??The 'insolvency of enterprises law' also recognises the role of the 'chambers for companies facing economic difficulties' (chambres des entreprises en difficulté) which are in charge of monitoring the 'health' of the companies. They check whether companies:

- have not paid their bills;
- have not paid their social security contributions, VAT or have been withholding tax for two quarters;
- have not pay their contributions to the National Institute of Social Insurance for Self-Employed for a quarter;
- have any ongoing trial for non payment of debt;
- have received notices mentioning seizing of assets;
- has been subjected to the opening of insolvency proceedings in another Member State, this fact must now be communicated (article XX.202 CDE)

The aim of the chambers is threefold:

- Track businesses in difficulty;
- Enable them to become aware of the situation;
- Encourage them to react appropriately to ensure their recovery and their safeguarding.

The chamber can examine at-risk cases and, if deemed necessary, a representative of the company is called upon by the chamber to discuss the situation of the company. The discussions are confidential. If the company is deemed in difficulties, the company can file for reorganisation.

The law (Title III of book XX) allows a company in temporary difficulties to undertake certain restructuring measures under the supervision of the judicial authority in order to avoid bankruptcy. There are three main options for restructuring, characterised by their different degree of voluntarism (low involvement of courts) and impact on the business. From the most voluntary and least impactful to the most, the three main options for restructuring are:

- An out-of-court agreement (article XX.38 CDE) with all or at least two creditors, chosen by the debtor, with a view to restructuring the debtor's liabilities. The out of court

agreement is protected by confidentiality and indivisibility of the company;
- The conclusion of a reorganisation plan, which must be approved by both the creditors and the national court; in this cases the CEO is replaced by an administrator appointed by the court;
- The sale of the business (or part thereof) as a going concern. This option is always overseen by the courts. If the application for insolvency has been filed less than two months before the agreed sale of assets seized to repay debt, the sales of assets should proceed unless the court decides otherwise. This is to avoid wasted costs of a sale where the filing of a petition is merely a procedural tactic to delay the process.

Another important feature introduced by book XX art. 2 paragraph 6, is the establishment of an online register where all the documents of the insolvency are kept; all communication is also via digital media (email) and has legal value.

On 25 May 2023, the House of Representatives adopted the draft law transposing Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring schemes, on debt write-offs and prohibitions on appeals, and on measures to increase the efficiency of restructuring, insolvency and debt cancellation procedures, and amending Directive (EU) 2017/1132 and containing various provisions on insolvency.

This law takes another step towards a more modern insolvency law and companies are given additional opportunities to restructure themselves in order to preserve the economic fabric.

Its main objectives are:

- To give a company in financial difficulties access to an effective preventive restructuring system that allows it to avoid insolvency.
- To give a company natural person a second chance.
- Make procedures on restructuring, insolvency and debt cancellation more efficient and shorter.
- Achieve further harmonisation of insolvency proceedings in the European Union.

Commentary

Generally speaking, in most of the cases creditors are willing to participate, considering that if they refused to do so, the company would be declared bankrupt and they would lose their money altogether.

Statbel, the Belgian statistical office, publishes data on bankruptcies in Belgium. To access the data, visit Statbel

Additional metadata

Cost covered by	National government
Involved actors other than national government	Other Court
Involvement (others)	Creditors, administrators, chambers for companies facing economic difficulties.
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

- Stradalex.com: 7 JUNI 2023. - Wet tot omzetting van Richtlijn (EU) 2019/1023 van het Europees Parlement en de Raad van 20 juni 2019 betreffende preventieve herstructureringsstelsels, betreffende kwijtschelding van schuld en beroepsverboden, en betreffende maatregelen ter verhoging van de efficiëntie van procedures inzake herstructurering, insolventie en kwijtschelding van schuld, en tot wijziging van Richtlijn (EU) 2017/1132 en houdende diverse bepalingen inzake insolvabiliteit (1)~~~ Wet Insolventie van ondernemingen~~~ Loi Insolvabilité des entreprises~~~ Verougstraete, I. (2010), Manuel de la continuité des entreprises et de la faillite, Waterloo: Wolters Kluwer Belgium~~~ Wet tot wijziging van verschillende wetgevingen inzake de continuïteit van de ondernemingen~~~ The New Belgium Insolvency Law~~~ Detection of companies in economic difficulties (La détection des entreprises en difficulté)~~~

Citation

Eurofound (2016), Belgium: Rescue procedures in insolvency, Restructuring legislation database, Dublin