

INSOL Europe/LexisNexis coronavirus (COVID-19) Tracker of Insolvency Reforms—Belgium

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Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of Belgium prompted by the coronavirus (COVID-19) pandemic. Written by Bart De Moor, lawyer, partner at Strelia and member of INSOL Europe, Marine Callebaut, lawyer, associate at Strelia and Sofie Onderbeke, lawyer, associate at Strelia.

The [law of 27 March 2020](#) grants special powers to the Belgian Government to take measures to combat the spread of the coronavirus, which translates into the possibility of taking measures directly by royal decree without a law having to be adopted by the House of Representatives.

The Belgian Government adopted the Royal Decree n°15 on 24 April 2020 which provides for the temporary suspension or moratorium of measures of enforcement and other measures for the benefit of enterprises during the coronavirus crisis. The temporary moratorium protects the enterprise against preventive and executory attachment, compulsory bankruptcy and judicial dissolution.

Scope of application

The moratorium applies to all enterprises falling under the scope of Book XX of the Belgian Code of Economic Law ('BCEL'), whose continuity is threatened by the spread of the coronavirus pandemic and its consequences, and who were not declared bankrupt on the date of the entry into force of the Royal Decree n°15 or were not in cessation of payment on 18 May 2020. An enterprise under Book XX of BCEL is any natural person who is self-employed and performs a professional activity, any legal person, including non-profit organisations and foundations, except (i) public law entities that do not provide goods or services and (ii) the state and its decentralised entities, and any other organisation without legal personality, unless it does not make or intend to make a profit distribution.

A temporary moratorium

1. Protection against preventive and executory attachment and other means of execution

The creditor cannot levy a preventive or executory attachment, nor can he use or proceed with any other means of enforcement on the enterprises' property, for all debts of the enterprise, including those approved in a re-organisation plan (the reorganisation plan referred to in article XX.82 BCEL falls under the preventive collective agreement procedure) before or after the entry into force of the Royal Decree n°15. This restriction does not apply to immovable property and preventive seizure on sea-going vessels and inland waterway vessels.

2. Protection against compulsory bankruptcy

Under Belgian law, a situation of bankruptcy arises when the enterprise (i) has ceased paying its debts as they fall due (cessation of payment) and (ii) has lost the confidence of its creditors (loss of creditworthiness). A debtor is obligated to declare its cessation of payment within one month of having met those bankruptcy requirements. In addition, under Book XX of BCEL, the creditors, the public prosecutor and the temporary administrators can also initiate proceedings in bankruptcy against a debtor (Where there exist substantial, definite and consistent indications that the conditions for bankruptcy are met, the President of the Enterprise Court, in accordance with article XX.32 BCEL, may deprive an enterprise of its management of all or part of its assets or activities and appoint one or more temporary administrator(s) familiar with the management of an enterprise and with accounting and determines their competence precisely).

The Royal Decree n°15 protects the companies affected by the coronavirus crisis by providing that an enterprise cannot be declared bankrupt by summons, unless by initiative of the public prosecutor or the temporary administrator appointed by the president of the Enterprise Court, or with the consent of the debtor.

Furthermore, the obligation of the debtor to declare its cessation of payment within one month of having met the bankruptcy requirements, is suspended during the period of suspension provided for by the royal decree n°15, if the fulfilment of the bankruptcy requirements is a result of the coronavirus pandemic and its

consequences.

3. Protection against judicial dissolution

Under the Belgian Code on Companies and Associations ('BCCA'), the President of the Enterprise Court may, at the request of a shareholder, as in summary proceedings, pronounce the dissolution of a company for legitimate reasons. The Enterprise Court may, at the request of any interested party or the public prosecutor, or after notification by the chambers for enterprises in difficulty, order the dissolution of a company that has failed to fulfil its obligation to file annual accounts in accordance with the BCCA.

Under the Royal Decree n°15, the enterprise, if it is a legal person, cannot be dissolved by the court, unless by initiative of the public prosecutor or the temporary administrator (as defined in article XX.32 BCEL) appointed by the president of the Enterprise Court, or with the consent of the debtor.

4. Protection against compulsory judicial re-organisation through transfer under judicial supervision

When an enterprise is in distress, it may rely on the procedure of judicial re-organisation through transfer under judicial supervision to ensure the continuity of all or part of the undertaking or of its activities. Moreover, the Enterprise Court may order the transfer under judicial supervision by summons from the public prosecutor, a creditor, or any person having an interest in acquiring all or part of the enterprise when, inter alia, the debtor is in state of bankruptcy without having applied for a judicial re-organisation procedure.

The Royal Decree n°15 provides that the Enterprise Court cannot order the transfer of all or part of a enterprise's activities under judicial supervision by summons from the public prosecutor, a creditor, or any person having an interest in acquiring all or part of the enterprise when the debtor is in state of bankruptcy without having applied for a judicial re-organisation procedure.

5. Protection of enterprises with an approved re-organisation plan

The Royal Decree n°15 sets out that the payment periods included in a re-organisation plan that is approved before or after the entry into force of the Royal Decree n°15, shall be extended for a period equal to that of the suspension referred to in this Royal Decree, if necessary with an extension of the maximum period of five years for the execution of the re-organisation plan.

6. Protection of ongoing contracts

Another protective measure for enterprises affected by the coronavirus crisis concerns the prohibition to unilaterally or judicially rescind contracts concluded before the entry into force of the royal decree n°15 on the grounds of non-payment of a pecuniary debt due and payable under the agreement. This however does not apply to employment contracts.

No prejudice to the obligation to pay due debts and the employer's obligations

Nonetheless, the Royal Decree n°15 stipulates that the above moratorium shall be without prejudice to the obligation to pay due debts and to ordinary contractual remedies such as, among others, the exception of non-performance, set-off and lien, as well as to the law of 15 December 2004 on financial collateral and on various tax provisions in relation to in rem collateral arrangements and loans for financial instruments. The moratorium does not affect employer's obligations.

Remedy for the creditors

The Royal Decree n°15 provides that any interested party may, by writ of summons, request the President of the competent Enterprise Court to rule that an enterprise does not fall within the scope of the moratorium provided for by the Royal Decree n°15 or to lift the moratorium in whole or in part by a specially reasoned decision. The action shall be filed and dealt with as in summary proceedings. The President of the Enterprise Court shall judge by priority over all other cases. The President shall take into account, inter alia, whether, as a result of the coronavirus pandemic, the debtor's turnover or activity has fallen sharply, whether the debtor has had full or partial recourse to economic unemployment and whether the government has ordered the closure of the debtor's enterprise, as well as the interests of the applicant.

Encouraging the granting of new credits

The Royal Decree n°15 provides for certain measures to protect new credit granted to enterprises that are subject to the Royal Decree n°15 during the period of the moratorium, and to the securities provided for these new credits or other acts performed in execution thereof. It protects the enterprise and the lender against clawback actions of the insolvency practitioner in case of later bankruptcy proceedings.

Entry into force

The Royal Decree n°15 enters into force from the date of its publication in the Belgian Official Gazette, ie 24 April 2020, up to and including 17 May 2020. The King may, by a decree adopted after the consultation in the Council of Ministers, adjust the end date of the suspension period.

INSOL Europe/LexisNexis Coronavirus Tracker of Insolvency Reforms

A tracker of insolvency reforms globally produced by Lexis Nexis in partnership with INSOL Europe is now available: [Coronavirus \(COVID-19\) Tracker of insolvency reforms globally](#).

We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.