

# Country Reports

## Winter 2015/16

Updates from Belgium, Ireland, Czech Republic, UK



ALEXANDER HANSEBOUT  
Lawyer, ALTIUS,  
Brussels (Belgium)

### Belgium: Stricter rules regarding reorganisation proceedings

**The Belgian Business Continuity Act of 31 January 2009 (“BCA”) provides for specific (court-supervised) restructuring proceedings during which the debtor company is protected against its creditors’ claims.**

The BCA was amended by the Act of 27 May 2013. The amendment extended creditor protection and restricted the freedom of the restructuring companies.

In general, court protection is granted if the company’s continuity is threatened and the debtor filed a request (supported by specific documents) in that regard. In most cases, the courts limit the initial protection period to three months. As a result, the creditors can no longer attach the assets or commence bankruptcy proceedings.

During the reorganisation process, the company’s management team continues to run the business and has to implement one of three options: (i) an amicable agreement with some of its creditors, (ii) a collective agreement with all of its creditors or (iii) a (partial) sale of assets as a going concern.

#### 1. Amicable agreement

The company can opt for an amicable, binding agreement with some of its creditors regarding the reimbursement of their claims.

#### 2. Collective agreement

The company can submit a reorganisation plan, proposing *inter alia* a reimbursement schedule for all of its creditors, aiming at preserving and continuing its activities. Within the framework of this plan, the company can propose to pay its debts in part only.

Companies often group their creditors into categories and offer different levels of payment to each category, although some special secured claims cannot be reduced.

The reorganisation plan must also contain an overview of the measures the company will implement to redress its social situation, profitability and solvency.

If the reorganisation plan is accepted by the majority of the regular and unsecured creditors, who together hold a majority of the company’s debt, and if all the procedural requirements have been met, the Court will accept it and declare it binding on all of the creditors, even those who voted against it or did not participate in the vote.

When dividing its creditors into categories, the company must ensure that it does not unfairly discriminate against any of them, as this would be a breach of the Belgian Constitution. Furthermore, the amendment to the BCA clarified that, in principle, at least 15% of every debt must be paid. Special provisions apply regarding tax and social security debts. Finally, some debtors cannot receive a haircut (e.g. fines and outstanding wages).

#### 3. Partial sale

In general, only if a collective agreement fails will an attempt to sell all or part of the business – the third option – be considered. This option aims to transfer the company’s activities (or some of them) as a going concern to a third party, together with the required employees and assets (e.g. buildings). Only the price paid for these assets can, in principle, be used to (partially) repay (some of) the creditors. The BCA’s amendment introduced more procedural guidelines in this respect and a provision regarding a minimum price.

Notwithstanding the BCA protection, creditors can undertake certain measures against the debtor. Firstly, BCA protection does not protect companies from the recovery of debts incurred after the BCA protection came into effect, meaning that debtors can enforce “new claims”.

Secondly, during the reorganisation process, creditors can suspend the delivery of goods and services until the company pays its outstanding debt. Creditors can also terminate (e.g. for cause) contracts with companies under BCA protection.

Thirdly, compensation between mutual claims is possible.

Finally, it is important to point out that the BCA protection only applies to the debtor concerned and not to the co-debtors or guarantors of old or new loans.



BART HEYNICKS  
Lawyer, ALTIUS,  
Brussels (Belgium)



**COURT PROTECTION IS GRANTED IF THE COMPANY’S CONTINUITY IS THREATENED**

