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Belgium: Rescue procedures in insolvency

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Belgium

Phase: Management

Type: Rescue procedures in insolvency

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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**

English name: **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**

Article

whole laws

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 subjcted 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;

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 proceeed 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.

Comments

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.

In the first half of 2019 a total of 5,602 companies declared bankruptcy in Belgium, which is an increase by13.3% compared to the same period in 2018.

2000	6.805
2001	7.094
2002	7.222
2003	7.593
2004	7.935
2005	7.878
2006	7.616
2007	7.680
2008	8.476
2009	9.420
2010	9.570
2011	10.224
2012	10.587
2013	11.740
2014	10.736
2015	9.762
2016	9.170
2017	9.968
2018	9.878

Source: Statbel.be

Cost covered by

Not applicable

Involved actors other than national government

Other

Involvement others

Court, creditors, administrators, chambers for companies facing economic difficulties.

Thresholds

No, applicable in all circumstances

Sources

- 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
- Wet op de continuïteit van de onderneming (WCO) Inzichten, trends en cijfers

- Wet tot wijziging van verschillende wetgevingen inzake de continuïteit van ondernemingen
- Eubelius
- The New Belgium Insolvency Law
- The New Belgium Insolvency Law
- Detection of companies in economic difficulties (La détection des entreprises en difficulté)

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Contact us

Eurofound, Wyattville Road, Loughlinstown, Co. Dublin, D18 KP65, Ireland

Phone: (00) 353 1 2043100

E-Mail: information@eurofound.europa.eu

Press: media@eurofound.europa.eu

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