



Laga Newsflash

Bill of 20 April 2017 on insolvency legislation: Codification with some additions

In an effort to further streamline Belgium's economic legislation, Minister of Justice Koen Geens introduced a new insolvency proceedings Bill on 20 April 2017. The bill is expected to pass through parliament before the beginning of summer recess and seeks to incorporate the Bankruptcy Law and the Law on the Continuity of Enterprises (LCE) in the Belgian Economic Code.

However, the proposed Bill is not limited to codification, as some of its provisions introduce significant changes to existing legislation. Aside from a chapter dedicated to implementing the provisions of the Insolvency Regulation of 20 May 2015, the major substantive changes include an expansion of the insolvency proceedings' scope, the introduction of electronic procedures, a shift towards out-of-court settlements for pre-insolvency procedures, the facilitation of a second chance for the bankrupt entrepreneur and the introduction of a 'silent' bankruptcy.

Scope

The Bill broadens the personal scope of insolvency proceedings to include all 'enterprises' including enterprises without legal personality, non-profit organisations and natural persons. The latter will also include qualified professionals who, with the introduction of this legislation, will be able to file for bankruptcy and apply for the protective regime currently provided by the LCE.

Electronic register

The Bill expands the already operational electronic bankruptcy in the codified insolvency legislation. The formalities accompanying both bankruptcy proceedings and those under the LCE will be made entirely electronic. The electronic register is available for consultation upon the payment of a fee (the fee will also be required for any submissions to the register).

Emphasis on amicable settlements under the LCE

Following European legislation, the emphasis in pre-insolvency proceedings is on extra-judicial solutions. New provisions are thus introduced to the current regime for amicable settlements under the LCE.

For instance, the bill explicitly states that creditors participating in such an amicable settlement cannot be held liable if, despite the agreement, subsequent bankruptcy proceedings follow. Additionally, the role of the enterprise negotiator is extended.

Other significant changes to the LCE-regime include: the introduction of a new screening system for enterprises with liquidity problems by the courts, a clarification of the fiscal authorities' position throughout a reorganisation procedure, and the possibility to publish the successful completion of a reorganisation-plan.

Second chance for the unfortunate bankrupt

Under the new Bill, the bankrupt entrepreneur will be more easily discharged of responsibility for the incurred debt.

The application for discharge will be admissible upon the application for the bankruptcy itself. Furthermore, the requested discharge may be awarded as early as 3 months starting from the opening of the bankruptcy proceedings, even if the bankruptcy has not been finalised yet. This provision aims to allow eager entrepreneurs to restart new business ventures as soon as possible.

The 'silent' bankruptcy

Following the example from the Netherlands, a silent pre-bankruptcy is introduced. This procedure is directed at enterprises which qualify for bankruptcy but mainly seek to sell off their assets before their devaluation following the publication of bankruptcy proceedings.

During the 'silent' bankruptcy phase, the bankrupt company will be assisted by the pre-liquidator. The pre-liquidator is tasked with the enterprise's preparation for bankruptcy. When a 'silent' bankruptcy leads to an actual bankruptcy, the pre-liquidator will be appointed as the bankrupt estate's liquidator.

The bill is expected to enter into force on 1 September 2017. Laga's restructuring team will follow up on any changes and is readily available to assist with any questions.

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