

CHANGES TO THE BELGIAN INSOLVENCY RULES - LE "PREPACK" EST ARRIVÉ?

Further to several temporary moratoria which were previously adopted by the Belgian government to protect companies against bankruptcy filings and enforcement measures and which have since expired, the Belgian legislator adopted a new law on 11 March 2021 aimed at giving companies additional tools to cope with the consequences of the Covid-19 pandemic.

A BELGIAN "PREPACK"?

The most important amendment brought about by the new law is that it introduces an entirely new "silent" procedure entitled "*accord préparatoire/voorbereidend akkoord*" which is intended to facilitate and to serve as a "prepack" for the preparation of formal reorganisation proceedings. The key features of the new regime are the following:

- an enterprise whose continuity is threatened can petition the president of the Enterprise Court unilaterally to appoint a court officer (*mandataire de justice/gerechtsmandataris*) to facilitate the negotiation of an amicable settlement with one or more of its creditors, or the establishment of a reorganisation plan before the actual launch of formal judicial reorganisation proceedings; the "prepack" procedure is not available for a reorganisation by means of a transfer of business;
- the decision of the president of the Enterprise Court granting (or dismissing) the debtor's request remains confidential until formal proceedings are opened; the court officer may also decide to start the discussions with certain creditors only, without informing the others;
- upon request of the court officer, the president of the Enterprise Court may also grant a moratorium (which may include payment terms and/or the suspension of enforcement) with respect to all or part of the outstanding debts of the debtor, including debts resulting from a notarial deed or a court decision, for a maximum duration of four months. The moratorium is hence potentially broader than the moratorium which applies in the case of formal reorganisation proceedings. The moratorium may be lifted *ex officio* by the president or upon request of the court officer or an interested creditor;

Key issues

- A new and confidential procedure to prepare for formal (expedited) reorganisation proceedings
- Possibility of a moratorium
- Additional measures to facilitate access to reorganisation proceedings
- Available until 30 June 2021 (subject to extension)

- when the debtor and one or more creditors reach an amicable agreement, or when a reorganisation plan is prepared (if the approval of the plan is deemed plausible), the president of the Enterprise Court transfers the case to the Enterprise Court with a view to the opening of expedited formal judicial reorganisation proceedings.

This new procedure will become available as from the date of publication of the new law and will, in principle, cease to apply on 30 June 2021. Popular expectation is, however, that the measures will be prolonged.

OTHER CHANGES TO NOTE

Aside from the new "silent" proceedings, the new law also provides that:

- debt reductions agreed in the context of an amicable settlement or in the proposed reorganisation plan are exempt from taxes; and
- the debtor may file the required supporting documents for its application for judicial reorganisation within two days after the filing of such application, and the absence of supporting documents no longer constitutes grounds for inadmissibility of the application. This latter amendment is also limited in time until 30 June 2021 (subject to extension).

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