COUNTRY COMPARATIVE GUIDES 2022

The Legal 500 Country Comparative Guides

Belgium

RESTRUCTURING & INSOLVENCY

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This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in Belgium.

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BELGIUM
RESTRUCTURING & INSOLVENCY

1. What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

Security over immoveable property

A security interest over real estate is created by way of a **mortgage**. A mortgage can cover ownership of real property, e.g. land, buildings and constructions, including bare ownership rights, freehold interests as well as other real property rights, such as long-term lease rights.

A mortgage needs to be established by notarial deed. The notary will also take care of the registration of the mortgage in the mortgage registrar, the timing of which determines the ranking. The registration is valid for thirty years. Besides the notary costs and fees, a registration fee of approximately 1.30% of the mortgage amount is due.

To avoid part of the registration fee, parties often agree to create a mortgage for a lower amount, and to provide the mortgagee with an irrevocable mandate (which is subject to a fixed registration fee of only € 50) to establish a second mortgage whenever the mortgagee deems it to be necessary. This mortgage mandate will only be an effective security in rem upon conversion into a regular mortgage, at the occasion of which the 1.30% registration fee will be due.

Security over movable property

The most common security over movable property is the **pledge**. Until recently, pledges still required some kind of dispossession of the pledgor, with the exception of pledges on the business (which had to be registered). This changed in 2018 with the introduction of a national pledge register (https://financien.belgium.be/nl/E-services/pandregister). If the parties register the pledge, it is no longer necessary (albeit still possible) to dispossess the pledgor of the encumbered goods in order to create a valid and enforceable pledge. A registration of a pledge is subject to a fee which increases in function of the secured amount, with a maximum fee of € 500. The registration is valid for ten years.

Pledges on certain specific assets are still regulated separately. This concerns most notably pledges on receivables and pledges on financial collateral (cf. EU Directive 2002/47/EC of 6 June 2002).

In sales contracts, **retention of title** clauses are also commonly used. Such a clause will suspend the transfer of the ownership of the goods sold to the buyer until full settlement of the sales price. The goods can be reclaimed if the buyer fails to pay the purchase price, insofar the clause has been agreed to in writing, ultimately at the delivery of the goods. The retention of title is not subject to any requirement of registration or publication, but if it is registered in the national pledge register, it will remain enforceable even when the goods became immovable by incorporation in real estate or when they have been processed or mixed with other goods.

2. What practical issues do secured creditors face in enforcing their security (e.g. timing issues, requirement for court involvement)?

Mortgage

A mortgagee will only be entitled to immediately enforce the mortgage upon default of the debtor, if the notarial deed by which it is established contains all the elements to determine the existence and the amount of the outstanding secured claim. This explains why, when the mortgage is given to secure a credit, the mortgage deed will in principle incorporate a copy of the private credit agreement. If the notarial deed does not contain all the elements to determine the existence and the amount of

the outstanding secured claim, the mortgagee should first initiate proceedings on the merits in order to obtain an enforceable payment order from the court. The rules applicable to forced execution of immovable property also apply on the foreclosure process initiated by the mortgagee. It means the immovable property first needs to be attached by a bailiff. Subsequently, the mortgagee can request the court to appoint a notary to organize a public auction and to distribute the proceeds amongst the creditors. Alternatively, it is also possible to file a petition to organize a private sale of the immovable property in which case the judge will ascertain that the immovable property is sold at a fair market value.

Pledge

Contrary to the mortgagee, a pledgee has in principle a right to immediately enforce the pledge upon default of the debtor. For most pledges, this requires the pledgee to first send a notice of default to the debtor and, as the case might be, to the third party pledgor or any other third party with competing rights over the goods. If the default is not cured within ten days, the pledgee can pursue the enforcement even if he does not dispose of an enforceable title on the merits of the claim. However, if the pledgor is a consumer, the pledgee needs to be authorized first by the court to enforce the pledge. Subject to certain conditions, the pledgee can enforce the goods by selling them, appropriating them or (albeit uncommon) by renting them. The enforcement occurs at the risk of the pledgee who cannot limit or exclude its liability in this regard. If the proceeds of the enforcement exceed the value of the secured claim, the balance must be returned to the pledgor.

Pledged claims

Unless otherwise agreed, the pledgee is authorized to request payment from the debtor of the pledged claim even when the secured claim is not yet due. If the amount of the pledged claim paid by the debtor exceeds the value of the secured claim, the balance must be returned to the pledgor.

Retention of title

If goods are sold subject to a retention of title clause, the owner can reclaim the possession thereof when the buyer is in default. When the latter refuses to voluntarily return the goods, the owner should seek for a court order to compel the buyer to return the goods. As this is litigation on the merits, it might take some time before the buyer effectively obtains the order. If there is a risk that the buyer disposes of the assets in the meantime, the seller can request for a specific ex parte order to secure the recovery of the goods through a seizure measure. It should also be noted that quite often, the buyer already resold the goods within the ordinary course of its business to a third party in good faith. In such case and provided that the third party did not yet settle its debts to the buyer, the retention of title will transfer from the goods to the claim of the buyer against the third party.

Financial collateral

Upon the occurrence of an enforcement event and subject to the terms agreed, a creditor benefitting from financial collateral has the right to immediately enforce the collateral by selling or by appropriating the financial assets (cfr. the EU Collateral Directive). The creditor does not need to have an enforceable title.

3. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency procedures upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

A business that ceased to pay its due debts on a permanent basis and that does no longer enjoy any credit from its (main) creditors, is in a state of bankruptcy. When both conditions are met, the directors are obliged to file for the company's bankruptcy within one month. Failure to do so might result in personal liability of the directors, both at a civil and criminal level. The one-month term is however suspended if the debtor files for judicial reorganisation proceedings. In principle, the bankruptcy filing by the business should be made electronically via the Central Solvency Register (REGSOL) via www.regsol.be.

It should also be noted that the 2017 insolvency code has drastically extended the definition of persons and organisations who qualify as a business. It now includes (i) all natural persons exercising a professional activity on an independent basis and (ii) all (non-public) legal persons (even non-profit organisations), and (iii) any organisation without legal personality unless it operates on a non-profit basis.

4. What insolvency procedures are available in the jurisdiction? Does management continue to operate the business and/or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?

The main insolvency proceedings for businesses are bankruptcy proceedings and liquidation proceedings.

When **bankruptcy proceedings** are opened, the Business court appoints (i) a bankruptcy trustee to secure, manage and liquidate the assets of the bankrupt estate and (ii) a judge commissioner to supervise the management and liquidation of the assets by the bankruptcy trustee. By operation of law, directors or natural persons of a bankrupt business lose their legal power to represent the bankrupt estate or to dispose of the assets thereof. The bankruptcy trustee is also responsible to distribute between the creditors the proceeds from the liquidation of assets. Bankruptcy proceedings typically last 1 to 3 years.

For companies, **liquidation proceedings** can also be used as an alternative for bankruptcy proceedings, even if the estate is deficient. It requires however a (tacit) approval of the main creditors. Liquidation proceedings can be opened following a decision of the shareholders to wind up the company, following a court winding-up order or by operation of law.

An insolvent business can also still file for **reorganisation proceedings**. This is discussed below (see question 8 to 11).

5. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities)? Could the claims of any class of creditor be subordinated (e.g. equitable subordination)?

A distinction should be made between creditors “of” the estate and creditors “in” the estate.

The first group covers all debts the trustee has made or should have been in order to properly manage the bankrupt estate. It also covers all debts originated during preceding reorganisation proceedings, if any. All those debts should be paid by priority over the other debts.

The second group of creditors in the bankrupt estate consists of three subcategories (in order of priority):

- creditors with a privilege or security interest on specific assets: those creditors have preferential rights on the sales proceeds of those assets (e.g. holders of a mortgage or a pledge). Debts of the estate (the first group) can also be settled from the proceeds of secured assets, if the creditor proves that its claims results from a performance which allowed the preservation of the secured assets.
- creditors with a privilege on all movable resp. immovable goods: those creditors will be next in line to receive the proceeds of the assets (e.g. the tax authorities, social security authorities and employees)
- non-privileged creditors

If the proceeds of enforcement of the secured assets prove to be insufficient to repay the claims of the preferred creditors, those creditors become unsecured creditors in respect of the balance of their claim.

The concept of equitable subordination is not known under Belgian law.

6. Can a debtor’s pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

First, the bankruptcy trustee can challenge any fraudulent transactions made to the detriment of the creditors regardless of when they occurred (actio pauliana).

Secondly, Belgian bankruptcy law also provides for specific claw back actions to allow the bankruptcy trustee to challenge certain transactions occurred during the hardening period. This is the period prior to the opening of the bankruptcy proceedings during which the bankruptcy conditions were already met. It requires a specific court order to set back that date. In principle, the date cannot be set back for more than six months compared to the date of the opening of the bankruptcy proceedings. Subsequently, the bankruptcy trustee can challenge the following transactions when they took place during the hardening period:

- gifts or transactions at no or at undervalue;
- all payments, in cash or in kind, of undue debts;
- granting of security in respect of pre-existing debts
- all payments of due debts, if the creditor knew that the bankrupt conditions of the debtor were already met

The latter three transactions are however protected against claw back action initiated by a bankruptcy

trustee, if the transactions were part of an amicable agreement ratified by a court (see question 8).

7. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

Legal proceedings

When bankruptcy proceedings are opened, the bankrupt estate should be (further) represented by the bankruptcy trustee in all pending and new legal proceedings. Moreover, proceedings in which a monetary claim is pursued against a debtor who is declared bankrupt pending those proceedings are suspended by operation of law. The claimant should first file a claim in the bankrupt estate. If the bankruptcy trustee accepts the claim, the proceedings against the bankrupt estate will no longer have any relevance. If the bankruptcy trustee disputes the claim, the bankruptcy trustee is presumed to resume the pending proceedings, at least in respect of the disputed part.

Enforcement of creditor's claims

The opening of bankruptcy proceedings will suspend the enforcement rights of the creditors. However, if the enforcement is already in an advanced stage, it can in principle continue for the account of the bankrupt estate.

All creditors will be invited to file their claim in the bankrupt estate. Subsequently the bankruptcy trustee will either accept or dispute them in its procès-verbal of verification of claims.

After the filing of the first procès-verbal by the bankruptcy trustee, creditors with a security interest over movable property can again enforce the collateralized assets, but the bankruptcy trustee can request the court to further suspend such creditor's enforcement rights.

Likewise, the creditor benefitting from the first raking mortgage can enforce the collateralized immovable property after the filing of the first procès-verbal by the bankruptcy trustee.

8. What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and/or is the debtor subject to supervision? What roles do the court and other stakeholders play?

Out of court amicable agreement

An **out of court amicable agreement** executed with at least two creditors about the settlement of their claims, can enjoy certain benefits when it respects specific conditions and is filed in the solvency register. The main benefits are **(i)** that the agreement will be protected to a large extent against claw back actions in case of a subsequent bankruptcy of the debtor (see question 6) and **(ii)** that the parties can request the judge to declare the agreement enforceable. The agreement will not be disclosed to third parties, unless the debtor expressly consents to it.

Judicial reorganisation proceedings

When the continuity of a business is in danger, a debtor can file for judicial reorganisation proceedings. When the proceedings are opened, (most) enforcement rights of the creditors will be temporarily suspended in order to allow the debtor – who fully remains in possession of its business – to restructure its business according to one of three schemes provided for in the law. The proceedings will initially be opened for a maximum term of six months, but this term is renewable to a maximum of twelve months or exceptionally even eighteen months.

First of all, the debtor might execute an **amicable agreement** with at least two creditors to repay their claims. It is to a large extent subject to the same rules as the out of court amicable agreement, but in this case the agreement does not benefit from a principle non-disclosure to third parties and the ratification by the court is a mandatory requirement to enjoy the benefits. Waivers of debts resulting from in-court amicable agreements will benefit from certain tax exemptions.

The second scheme is the **collective agreement**, which requires the debtor to draft a reimbursement plan containing a proposal for (partial) reimbursement of all creditors (it is allowed to divide the creditors into different classes) within a term of maximum five years. The reimbursement plan should respect certain specific rules, most notably the prerequisite that it should provide for a reimbursement of (in principle) at least 20% of the principal amount of the claims or, in respect

of certain specific claims (e.g. from employees), of 100 % of the principal amount.

The plan is submitted to a vote at a meeting of creditors and is approved if the majority of creditors attending the meeting (head count) representing a majority of the value of the claims vote in favour. An exception is however made in respect of the so-called extra-ordinary creditors, being (i) creditors benefitting from securities in rem and (ii) creditors benefiting from a retention of title clause. The individual approval of the extra-ordinary creditors is required for any measure in the plan which adversely affects the secured amount of the claim (with the exception of an additional stay of 24 months). After approval of the plan by the creditors, it must be ratified by the court. The court can refuse to ratify the plan only if the procedural rules are violated or if the plan is contrary to public order. A court can also allow the debtor to submit an adjusted plan to the creditors. It should be noted that the rules regarding the collective agreement will change drastically following the transposition of the 20 June 2019 EU Restructuring Directive 2019/1023 by 17 July 2022 at the latest (Belgium will not meet the deadline, see question 22).

Lastly and most drastically, the debtor might also opt for **a court supervised sale of its business** (in certain specific cases, the court can order these proceedings upon request of specific third parties). In such case, the court will appoint a judicial administrator who will be responsible to organize the sales process by drafting a sales memorandum, setting up a data-room, inviting potential buyers to perform a mini due diligence, etc. to attract a maximum of offers from potential buyers. Subsequently, the judicial administrator will ask the court to authorize the transfer of the business of the debtor, to the party who has submitted the best offer.

9. Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?

A debtor subject to judicial reorganisation proceedings can still obtain new financing and can provide new collateral to secure such financing. If shortly after the termination of the reorganisation proceedings the debtor is declared bankrupt or is wounded up, or if the debtor has been subject to a court supervised sale of the assets, the new financing will be considered as a preferential debt of the insolvency assets in those insolvency proceedings. Preferential debts of the insolvency assets can also be settled from the proceeds of secured assets, if the creditor proves that its claims results from a performance during the reorganisation proceedings which allowed the preservation of the secured assets.

10. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

Not as a general rule, but certain exceptions apply in respect of:

- personal guarantees provided by natural persons, free of charge; and
- the spouse or legal cohabitant when the debtor is a natural person

11. Is it common for creditor committees to be formed in restructuring proceedings and what powers or responsibilities do they have? Are they permitted to retain advisers and, if so, how are they funded?

The concept of creditor committees in restructuring proceedings does not exist under Belgian law. The forthcoming transposition of the EU Restructuring Directive 2019/1023 into Belgian law should trigger a greater involvement of creditors in restructuring proceedings.

12. How are existing contracts treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?

Restructuring proceedings

As a general rule, the opening of reorganisation proceedings does not affect the contractual rights of the parties. It is, however, not allowed to unilaterally **terminate** existing contracts or to change the modalities thereof, merely because the other party filed a petition for judicial reorganisation proceedings (even if such a right has been provided for in the contract). In respect of other defaults existing at the time of the opening of the reorganisation proceedings, a creditor is still entitled to terminate the contract, but the debtor has a right to cure such defaults within fifteen days upon

receipt of the notice of default.

If a contract is terminated during the reorganisation proceedings and such termination results in an obligation to return goods, the creditor can claim back the property of its goods which are still in the possession of the debtor (for instance, the lessee should give back the goods to the lessor after the termination of the lease contract). The situation is however different for a creditor benefitting from a retention of title. As in such case the ownership rights rather served as security for the claim of the creditor, a creditor will not be allowed to claim back the property of its goods as this will be considered as a forbidden enforcement.

Secondly, if it is deemed necessary for the restructuring, a debtor may unilaterally decide to **suspend** the performance of certain contractual obligations for the duration of the reorganisation proceedings. In such case, the other party might also suspend its contractual performance.

Set-off pursuant to a netting clause is still allowed but subject to certain restrictions.

Bankruptcy proceedings

In absence of a contractual clause to that end, the opening of the bankruptcy proceedings will not automatically **terminate** existing agreements. It is up to the bankruptcy trustee to decide promptly after the opening of the proceedings whether he will perform the contract or not. He will only be entitled to unilaterally terminate the contract if it is deemed strictly necessary for the management of the bankrupt estate and insofar it does not affect any rights in rem which are enforceable against the bankrupt estate. The other contractual party can also request the bankruptcy trustee to take a decision as to the performance of the contract. If the bankruptcy trustee does not respond within fifteen days, the contract will be considered terminated by operation of law.

A retention of title clause is not affected by bankruptcy proceedings, but the creditor should notify the bankruptcy trustee of its will to enforce the clause, prior to the date of the filing of the first PV of verification of claims by the bankruptcy trustee.

Set-off pursuant to a netting clause is still allowed but subject to certain restrictions.

13. What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets “free and clear” of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

Restructuring proceedings

When assets are transferred as part of a court supervised sale of the business, the assets will be transferred free and clear of any encumbrances, as the rights of the creditors are transferred to the purchase price (when immovable property is sold, the intervention of a notary is necessary to release the mortgage). The creditors’ consent is not required. Nevertheless, creditors benefitting from a registered security over movable property, as well as creditors benefitting from a registered security or who have levied an attachment over immovable property, need to be summoned to the court hearing deciding on the transfer of the business, in order to allow those creditors to substantiate their position in respect of the intended transfer of the secured assets.

Bankruptcy proceedings

A bankruptcy trustee is entitled to sell, without the creditors’ consent, all the assets belonging to the bankrupt estate free and clear of any encumbrances. Specific rules apply in respect of a sale of immovable property. Given the fact that certain secured creditors have (subject to certain conditions) a competing right to sell the secured assets (see question 7), a bankruptcy trustee will in principle ensure that he has the (tacit) agreement of the secured creditors when he is selling secured assets, in order to avoid any disputes afterwards.

Credit bidding is allowed, but very uncommon in practice.

Legislation on **pre-packed sales** has not been passed in Belgium. Initiatives have been taken in the past, but have never resulted in effective legislation to date, mainly because of a strong opposition of the labour unions.

14. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to

incur liability for the debts of an insolvent debtor?

A debtor is obliged to file for bankruptcy within one month after the conditions for bankruptcy have been met. Failure to do so may trigger civil and/or criminal liabilities for directors of the debtor.

The new insolvency code introduced the concept of wrongful trading. If the debts exceed the proceeds of the bankrupt estate, the bankruptcy trustee can initiate a claim against the current or former directors or other persons who have de facto exercised the powers of directors, to hold them jointly and personally liable for all or part of the debts of the bankrupt estate. In order to be successful, the bankruptcy trustee must prove that at the time the defendant exercised those powers, **(i)** he knew or should have known that there was no reasonable and obvious perspective of preserving the business and of avoiding bankruptcy and **(ii)** he failed to act as can be expected from a reasonably prudent and diligent director in the same circumstances.

Subject to certain conditions, directors can also be held jointly and personally liable for the unpaid social security contributions, tax or VAT.

It should also be noted that the new company code has introduced liability caps for directors. The liability of directors will be capped at EUR 250,000, EUR 1,000,000, EUR 3,000,000, or EUR 12,000,000 depending on the turnover and assets of the company. The cap will not apply in the event of fraud, gross negligence, or repetitive minor misconduct or in relation to the abovementioned liability for unpaid social security, tax or VAT.

15. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions?

N/A

16. Will a local court recognise foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Does recognition depend on the COMI of the debtor and/or the governing law of the debt to be compromised? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?

Any judgment opening insolvency proceedings handed down by a court of another EU Member State which has jurisdiction pursuant to the 2015 EU Insolvency Regulation shall be recognised in Belgium without the need for separate exequatur proceedings pursuant to the principles of the same Regulation.

Foreign insolvency court decisions not covered by the Regulation (EC) 2015/848 may require separate exequatur proceedings in order to be recognized in Belgium.

Belgium has signed but did not ratify the UNCITRAL Model Law on cross-border insolvency. There are no plans for its ratification in the near future.

17. For EU countries only: Have there been any challenges to the recognition of English proceedings in your jurisdiction following the Brexit implementation date? If yes, please provide details.

We are not aware of any published case law where this has been challenged.

18. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions?

Belgian insolvency courts have jurisdiction to open (main) insolvency proceedings when the centre of the debtor's main interests (COMI) is situated in Belgium. The centre of main interests is the place where the debtor conducts the administration of its interests on a regular basis, and which is ascertainable by third parties. In the case of a company or legal person, the place of the registered office is presumed to be the centre of its main interests in the absence of proof to the contrary.

Those rules, originating from the 2015 Insolvency Regulation, were also incorporated in the Belgian rules of private international law. Consequently, it also applies to a debtor incorporated in jurisdictions of non-EU Member States.

19. How are groups of companies treated on the restructuring or insolvency of one of more members of that group? Is there scope for cooperation between office holders?

If a Belgian business court has jurisdiction to open insolvency proceedings in respect of a member of a group, it also has jurisdiction to open insolvency proceedings in respect of the other members of the group whose centre of main interests is located in the judicial area of another Belgian business court. In such case, the same insolvency practitioner can be appointed for all members of the group.

20. Is your country considering adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

Belgian law complies to a large extent with the standards set in the UNCITRAL Model Law on Enterprise Group Insolvency, given the direct applicability of the EU Insolvency Regulation 2015/848 (containing rules regarding insolvency proceedings of members of a group of companies) and several new concepts introduced in our national insolvency code in 2017.

21. Did your country make any changes to its restructuring or insolvency laws in response to the Covid-19 pandemic? If so, what changes were made, what was/is their effect and were/are they temporary or permanent?

A specific moratorium has been introduced by the Belgian legislator to protect businesses against enforcement measures sought by creditors and against bankruptcy orders at the initiative of creditors. This moratorium was in force a first time from 24 April 2020 until 17 June 2020 and was subsequently reintroduced a second time during the period 24 December 2020 to 31 January 2021 for businesses who were forced to stop their activities following the lock-down measures taken by the government. The moratorium was not extended after this date. The government, however, promised to introduce a set of new rules to restructure businesses more easily.

A first initiative was taken by an Act of 21 March 2021, whereby several provisions of the 2018 insolvency code were modified, mainly to lower the burden for businesses to apply for judicial reorganization proceedings. The same act also introduced a new insolvency tool for debtors, known as the “preparatory agreement”. This tool allows the debtor to enter into negotiations with certain creditors in order to prepare for an amicable or collective agreement, prior to the effective opening of judicial reorganization proceedings. This process is facilitated by a court-appointed insolvency practitioner, who might apply for specific court orders to restrict enforcement rights of certain creditors. This new procedure is not subject to any publication. Most rules enacted by the 21 March 2021 Act were valid until the end June 2021, but the deadline was extended to 16 July 2022, i.e., the deadline to transpose EU Directive 2019/1023 (see next question). It is expected that the deadline will be extended once more, as the act to transpose the EU Directive 2019/1023 will not be transposed in time.

22. Are there any proposed or upcoming changes to the restructuring / insolvency regime in your country?

The Belgian Act to transpose the EU Restructuring and Second Chance Directive 2019/1023 into Belgian insolvency law should be adopted by 17 July 2022. The whole process suffered some delays as a consequence whereof Belgium will fail to meet the deadline. It is expected that the draft bill will only be submitted to the Parliament in the autumn of 2022. The new rules will mainly have an impact on collective agreements executed in the framework of reorganization proceedings.

23. Is it a debtor or creditor friendly jurisdiction?

Belgian insolvency law is highly regulated and strikes a good balance between the rights of debtors and creditors.

24. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the state play in relation to a distressed business (e.g. availability of state support)?

In the context of insolvency, the Belgian legislator has granted strong rights for employees, FPS FINANCE (treasury department) and the National Social Security office. Labour unions and employee representatives

have an increased say in larger insolvency proceedings. This was one of the main reasons why legislation on pre-packed sales has not been passed in Belgium.

25. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

Belgium has made extensive progress in making the restructuring and insolvency procedures more efficient, modern and effective, inter alia through the introduction of the following recent laws:

- A new insolvency code (applicable as from 1 May 2018);
- A new act concerning securities on movable property (applicable as from 01 January 2018); and
- A new companies and associations code (applicable as from 01 May 2019).

Greatest barriers at the moment are the duration of insolvency proceedings, the absence of pre-pack legislation and possible inconsistencies between the new laws.

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