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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 interests over immovable property

The security rights that can apply over immovable property include mortgages (hypotheken) and special privileges on immovable property, commonly referred to as 'immovable privileges' (onroerende voorrechten).

A mortgage is a security right in rem that grants the creditor a preferential claim over the proceeds of the immovable property.

To be valid, a mortgage must be executed in an authentic deed or a private deed recognised in court or by a notary. The deed must identify the encumbered property, specify the secured obligation, and certify the identity of the parties. If these formalities are not complied with, the mortgage agreement is null and void.

The above applies to conventional mortgages (conventionele hypotheken). Without delving into detail, it should be noted that legal mortgages (wettelijke hypotheken) also exist, arising by operation of law and thus existing automatically, without the need for an agreement. For example, the tax authorities obtain a legal mortgage as soon as tax debts exist. Mortgages may also be established by a testator in their will to secure the performance of legacies, referred to as testamentary mortgages (testamentaire hypotheken).

For any mortgage – conventional, legal or testamentary – to be opposable against third parties, it must be registered with the office of the General Administration of Patrimonial Documentation (Algemene Administratie van de Patrimoniumdocumentatie) in the district where the encumbered immovable property is located. Without such registration, the mortgage cannot be invoked against third parties and does not secure a preferential ranking. The registration remains effective for 30 years and can be renewed.

In cases of concurrence (samenloop), e.g., insolvency or liquidation, certain special privileges on immovable property (bijzondere onroerende voorrechten) may arise in favour of specific creditors by virtue of the nature of their claims. These privileges are not contractually agreed (as is typically the case with mortgages) but derive from statutory provisions, existing solely in cases of concurrence.

Concurrence occurs when multiple creditors simultaneously assert claims over the debtor's estate, as in bankruptcy or liquidation.

Examples of these special privileges include unpaid sellers of immovable property, architects, contractors, labourers, and associations of co-owners.

These special privileges must also, with limited exceptions, be registered with the relevant office of the General Administration of Patrimonial Documentation to be opposable against third parties. Such registration is valid for 30 years and may be renewed.

Security interests over movable property

Security rights over movable property include pledges (pandrechten), special privileges (bijzondere voorrechten) and rights of retention (retentierechten). In addition, general privileges (algemene voorrechten) exist, which are not linked to a specific asset but apply broadly to all movable property of the debtor concerned.

A pledge gives the creditor priority recourse over the proceeds of the pledged movable property. It may cover both tangible and intangible goods, including future goods.

A pledge is valid only if the pledgor has the authority to pledge the goods. No formalities are required apart from mutual agreement. However, where the pledgor is a consumer, the agreement must be in writing and meet certain statutory requirements.

For opposability against third parties, a distinction must be made between registered pledges (registerpanden) and possessory pledges (vuistpanden). A registered pledge is opposable through registration in the National Pledge Register (Nationaal Pandregister), which expires after 10 years unless renewed. A possessory pledge is opposable by the transfer of possession of the pledged asset to the creditor or a mutually agreed third party.

In the case of pledges over receivables, additional requirements apply regarding both validity and

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opposability. Such a pledge is valid if the pledgor is authorised to notify the debtor of the pledged receivable. Since receivables are intangible assets, they cannot be physically delivered. As a result, opposability against third parties depends on the pledgor's capacity to notify, and opposability against the debtor and third parties holding a competing right depends on either notification to or acknowledgment by the debtor of the pledged receivable. Registration in the pledge register is not possible.

A separate regime applies to the pledge of cash, bank claims, and financial instruments (e.g., shares), governed by the Financial Collateral Act (Wet Financiële Zekerheden), which provides a more flexible framework, especially in insolvency scenarios. The commencement of an insolvency proceeding (e.g., bankruptcy, judicial reorganisation, or collective debt settlement) does not prevent the pledgee from enforcing the pledge.

Special privileges over movable property (bijzondere voorrechten op roerende goederen) also exist, granted by law due to the specific nature of the claim. These privileges grant the creditor priority (only) in case of concurrence.

Examples of such privileges include unpaid sellers of movable goods, repairers of items, and unpaid lessors.

These privileges require no publication to be opposable; statutory recognition is sufficient.

Certain creditors may also benefit from general privileges over movable goods (algemeen voorrechten op roerende goederen) by operation of the law in the event of concurrence. These do not grant the entitled party a right to a specific asset, but they do entitle them to be paid with priority from the bankruptcy estate (faillissementsboedel). For example, a general privilege is granted to employees for the payment of their wages, to the claims of the National Institute for Health and Disability Insurance (Rijksinstituut voor Ziekte- en Invaliditeitsverzekering or RIZIV), as well as to the contributions and surcharges due to the National Social Security Office (Rijksdienst voor Sociale Zekerheid or RSZ).

In addition, there is the right of retention (retentierecht), which constitutes a special case. This security right grants the right to withhold the delivery of an asset belonging to another, for as long as the claim relating to that asset remains unpaid by the other, and it also grants priority in the event of concurrence. This right of retention exists only in respect of certain and due claims that are closely connected to the asset to which the retention applies, and only for assets that are in the actual possession of the creditor.

Such possession is sufficient for the right of retention to be opposable against third parties.

Finally, ownership can also be used as security right over tangible movable goods. For example, a retention of title clause (eigendomsvoorbehoud) may be agreed upon in a sales contract, whereby the transfer of ownership is contractually postponed until full payment of the purchase price.

For a retention of title to be validly established, it must be recorded in writing, per individual sale. The retention of title may also be included in the general terms and conditions, provided the buyer has the opportunity to take note of it prior to delivery. Lastly, the buyer must effectively agree to the retention of title. In the case of a consumer, such agreement must be given explicitly by signature.

There is no publicity requirement for the retention of title to be opposable against third parties.

Lastly, there are two special recovery mechanisms allowing a creditor to obtain payment outside the ordinary ranking of claims. These mechanisms may disrupt the equality of creditors and are therefore often treated separately in insolvency proceedings. It concerns the right of set-off (schuldvergelijking) and the direct action (rechtstreekse vordering).

The right of set-off arises by law, provided the statutory conditions for set-off have been met (statutory set-off), or may be agreed contractually, with the parties being able to expand the possibilities for set-off, allowing this technique to be used to offset claims even when the conditions for statutory set-off have not yet been met (contractual set-off). It constitutes a type of security right over the claim that another party has against the creditor concerned, up to the amount of the creditor's own claim.

The direct action is a statutory mechanism allowing a creditor to pursue the debtor of their own debtor directly, in their own name and for their own account. By exercising the direct action, the creditor acquires an exclusive right to payment by the sub-debtor, even if the original debtor is subject to concurrence, thereby allowing the creditor to bypass the ordinary ranking of claims.

2. What practical issues do secured creditors face in enforcing their security package (e.g.

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timing issues, requirement for court involvement) in out-of-court and/or insolvency proceedings?

Outside formal insolvency proceedings

Certain securities require specific procedural steps before enforcement can take place.

Enforcement of a pledge may, subject to certain steps (e.g. prior notification to the debtor), take place entirely out of court. However, if the pledgor is a consumer, enforcement by the pledgee requires judicial intervention. The competent court is the judge in charge of attachments (beslagrechter). The judge will then decide whether the pledge can be enforced and, if so, whether the pledged asset is to be assigned to the pledgee or sold.

For mortgages, the procedure for enforcement through attachment of immovable property must be followed. This requires an enforceable title (uitvoerbare titel) evidencing the debt, either a court judgment or an authentic instrument. The bailiff and notary will then take the necessary steps. If the creditor holds an authentic instrument, the process is straightforward, and court intervention is not required. If not, the creditor must first initiate court proceedings to obtain an enforceable title.

During insolvency proceedings in the broad sense (judicial reorganisation, transfer under judicial authority, bankruptcy, liquidation and collective debt settlement)

For an overview of the various restructuring and liquidation procedures under Belgian law, reference is made to Sections 3 and 8.

In the context of bankruptcy, a situation of concurrence arises. The general rule is that concurrence leads to the application of the principle of equality of creditors and the principle of crystallisation (fixatiebeginsel), under which no new (opposable) security rights may be established. Up to the date of the bankruptcy judgment, it remains possible to create opposable security rights; thereafter, it is no longer allowed.

In principle, the enforcement rights of creditors are suspended.

The rights of enforcement of secured creditors – those holding a pledge, mortgage, or special privilege – are only suspended from the date of the bankruptcy judgment until the filing of the first report of verification of claims (proces-verbaal van verificatie van schuldvorderingen), which is within approximately one month after the bankruptcy judgment. The creditor must file its claim via the Central Solvency Register (Centraal Register Solvabiliteit or RegSol) and indicate any security rights. Once both the claim and the security right are admitted by the trustee through inclusion in the (first) verification report, the creditor may proceed to enforce the security. However, the trustee may impose a longer suspension period in the interest of the estate (boedel) – up to a maximum of one year. To enforce the security right, if applicable, the creditor must follow the standard enforcement procedure.

For creditors with a retention of title, the reverse applies. They must act before the first verification report is filed. During that period, they may submit a reclamation request to the trustee and benefit from superpriority (subject to certain exceptions) if the retention of title conflicts with a pledge on the same asset. In this way, they can recover the unpaid goods. If the trustee proceeds to sell the asset in disregard of the retention of title, the secured party's rights are subrogated to the proceeds by means of subrogation in rem (zakelijke subrogatie).

A right of retention may still be invoked in bankruptcy. If it is acknowledged by the trustee, the retentor may be required to hand over the asset. However, by recognising the right, the retentor retains priority over the proceeds of the asset.

A procedure of judicial reorganisation or transfer under judicial authority does not, in principle, give rise to a situation of concurrence, or at least not immediately. Therefore, establishing or making a security right opposable after the opening of the such procedure remains possible, although this no longer affects the qualification of the claim (ordinary or extraordinary), which is fixed at the opening of the procedure.

Creditors, although secured, may not enforce their rights during a judicial reorganisation or transfer under judicial authority, as all enforcement actions are generally suspended (unless it concerns a private reorganisation in which no suspension applies, or it applies only to certain creditors).

Attachments already carried out retain their preservative effect, but the court may lift them if this does not cause significant prejudice to the creditor.

If the scheduled date for the forced sale of seized assets falls within two months after the petition for the judicial reorganisation or transfer under judicial authority was filed, enforcement proceedings may continue. However, the court may order a suspension of the sale, either prior to or simultaneously with the decision to open the

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procedure, provided certain conditions are met.

The right of retention may still be invoked during a procedure of judicial reorganisation or transfer under judicial authority.

In liquidation (vereffeningsprocedure), new security rights may not be established due to the situation of concurrence. Enforcement is in principle not suspended, unless such action would violate the principle of equality of creditors. In general, this principle is not violated if enforcement is carried out by secured creditors. Enforcement by generally privileged or ordinary creditors may be blocked by action before the judge in charge of attachments.

The right of retention may still be invoked in liquidation. If the liquidator acknowledges the retention right, the retentor may be required to hand over the asset, but the latter retains priority over the proceeds through recognition.

With regard to pledgees under the special regime of the Financial Collateral Act (Wet Financiële Zekerheden), it is important to note that the above rules do not apply to them. They may enforce their pledge regardless of the existence of an insolvency proceeding (bankruptcy, judicial reorganisation, transfer under judicial authority, etc.).

In collective debt settlement (collectieve schuldenregeling), the general principle is that from the moment the procedure is admitted, all enforcement measures are suspended for as long as the procedure continues. Creditors must file their claim with the debt mediator (schuldbemiddelaar), indicating any security rights. If the relevant asset is sold during the procedure, the secured creditor has a preferential right to the proceeds. In this way, the interests of secured creditors are subordinate to the objective of achieving a repayment plan. Creditors may not sell the secured assets and are either voluntarily or compulsorily included in a repayment arrangement, in the execution of which they may no longer enforce their security rights due to the absence of a due and payable claim.

The right of retention may still be invoked in collective debt settlement. If it is recognised by the trustee, the retentor may be required to hand over the asset, but the latter retains their priority on the proceeds through recognition.

3. 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?

Judicial reorganisation procedure (Art. XX.40 et seq. and XX.64 et seq. WER)

For businesses (legal entities and natural persons), Belgian law provides for a single restructuring procedure: the judicial reorganisation procedure (gerechtelijke reorganisatieprocedure or GRP), as laid down in Book XX of the Code of Economic Law (Wetboek van Economisch Recht or WER).

This GRP has two forms: first, by way of an amicable agreement (minnelijk akkoord), in which the debtor seeks to reach an agreement with one or more creditors; second, by way of a collective agreement (collectief akkoord), under which a reorganisation plan is prepared that, if approved by the creditors and confirmed (gehomologeerd) by the court, becomes binding on all creditors.

Following the transposition of the EU Restructuring Directive, Belgian law has introduced, as of 1 September 2023, the possibility of a private GRP (besloten GRP). In this confidential procedure, decisions are not published. A restructuring expert (herstructureringsdeskundige) is appointed by the court to assist in the negotiation and drafting of the agreement or plan. The procedure becomes public only once an amicable agreement or reorganisation plan is ready for a vote by the creditors and/or confirmation by the court.

The trade-off for confidentiality is that there is no general suspension of enforcement against creditors. The restructuring expert may, however, request the court to impose a suspension against specific creditors.

Furthermore, for GRP by collective agreement, a different procedure applies depending on whether the business qualifies as a large enterprise or a small or medium-sized enterprise (SME). The regime mainly differs in the preparation, voting and confirmation of the reorganisation plan.

A large enterprise is an enterprise which exceeds one or more of the following criteria for two consecutive financial years:

- an annual average of 250 employees;
- annual turnover (excluding VAT) of EUR

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40,000,000;
- balance sheet total of EUR 20,000,000.

When assessing these thresholds, affiliated undertakings (as defined in Article 1:20 of the Code on Companies and Associations – Wetboek van Vennootschappen en Verenigingen or WVV) must also be considered. If they collectively exceed the threshold, the group is considered a large enterprise.

Admission requirements

To be admitted to a GRP, the debtor must be in a situation where the continuity of the business is threatened (either immediately or in the near future).

This procedure is available only to enterprises, whether natural persons engaged in a self-employed activity or legal entities.

To request the opening of the procedure, the debtor must submit a petition to the enterprise court via the Central Solvency Register (Centraal Register Solvabiliteit or RegSol), accompanied by the required annexes.

For a public GRP, the petition itself triggers a temporary suspension (mini-opschorting), meaning:

- the debtor cannot be declared bankrupt;
- the debtor cannot be judicially dissolved;
- no enforcement of movable or immovable property by way of execution may take place.

After filing, a delegated judge (gedelegeerd rechter) is appointed to supervise the procedure and report to the court on the debtor's requests (opening request and possibly request for the lifting of attachment and/or extension of suspension).

Course of proceedings

Once the procedure is opened, a general suspension (algemene opschorting) applies in the case of a public GRP, meaning:

- the debtor cannot be declared bankrupt;
- the debtor cannot be judicially dissolved;
- no enforcement of movable or immovable property by way of execution may take place; and
- no attachments (including preventive attachments) may be imposed.

This suspension period last for an initial period of maximum four months, extendable up to a maximum of twelve months.

During the procedure, the debtor prepares an amicable agreement or reorganisation plan.

An amicable agreement with one or more creditors becomes opposable once confirmed (gehomologeerd) by the court. No other formalities apply.

This differs for the reorganisation plan, as described below.

Approval and implementation of a reorganisation plan

In a procedure of judicial reorganisation, different rules apply to SMEs and large enterprises, mainly affecting the reorganisation plan.

Various measures may be proposed in a reorganisation plan (debt waivers, payment deferrals, debt-to-equity conversions, etc.). This applies to both large enterprises and SMEs.

For SMEs, specific requirements apply to the measures proposed in the reorganisation plan, irrespective of any valuation of the debtor's business. For example:

- each creditor must receive at least 20% of its claim;
- a public creditor with a general privilege (e.g. the tax authorities) may not be treated less favourably than the best-treated ordinary unsecured creditor;
- secured creditors may not be required to make any concession beyond a deferral of principal for up to 24 months, unless they individually consent to further measures.

Voting on the reorganisation plan is not organised by classes.

All creditors and shareholders whose rights are affected by the plan may vote.

The plan is approved if a majority of creditors, representing half of all outstanding principal and interest, vote in favour. This means a double majority: in number and in amount.

The plan may be implemented over a maximum period of five years. If the plan is not properly executed, a creditor may request its revocation.

For large enterprises, the measures proposed are primarily constrained by the valuation of the business. If a creditor or an entire class of creditors votes against the plan, the court must assess the plan, including the recovery measures, against several valuation-related

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tests. It is advisable that the proposed measures be aligned in advance with those standards. These include the best interest of creditors test, the absolute priority rule, and the reversed absolute priority rule.

Voting in large enterprise proceedings is organised by classes. Classification is based on the rights creditors would have in a liquidation scenario or the rights they have under the reorganisation plan. If the nature, quality or value of creditors' claims differ to such an extent that no comparable position exists, they must be placed in separate classes. Secured creditors (buitengewone schuldeisers) and the other, ordinary creditors (gewone schuldeisers) must in any case be placed in separate classes. Secured creditors are those with a pledge, mortgage, special privilege, right of retention, or retention of title. They are included in the secured creditor class only for the portion of their claim covered by security, based on the estimated recovery in a bankruptcy or liquidation scenario according to statutory ranking (the 'liquidation value').

The plan is approved if each class achieves a majority. A class is deemed to have approved the plan if a majority of class members, representing at least half of the outstanding principal and interests, vote in favour.

The court will confirm (homologeren) an approved plan if the following general confirmation criteria are met:

- the plan was adopted in accordance with the voting requirements;
- class formation was correct and creditors and shareholders with shared interests are treated equally and proportionately to their claim;
- the plan was timely filed with the Central Solvency Register (Centraal Register Solvabiliteit or RegSol);
- if applicable, new financing is necessary to implement the plan and does not unduly harm the interests of creditors.

A dissenting creditor may request the court to refuse confirmation if the best interest of creditors test is not satisfied, even if all classes have approved the plan. This test requires that the creditor receive at least what they would obtain in a hypothetical bankruptcy scenario. Consequently, a valuation report on the liquidation value must be submitted.

The court may also refuse to confirm the plan if, at the request of an interested party, it considers that the plan does not offer a reasonable prospect of avoiding liquidation or bankruptcy or safeguarding the viability of the business.

If an entire class votes against the plan, the plan is in principle not approved. However, the court may still confirm the plan if the general confirmation criteria are met and three additional tests are satisfied (the additional confirmation criteria): the support requirement, the absolute priority rule, and the reversed absolute priority rule.

Under the support requirement, the plan must be approved by: (i) one of the two existing classes; or, if more exist, (ii) a majority of the voting classes, provided that at least one is a class of secured creditors or ranks above unsecured creditors in the suspension; or, if not, (iii) at least one class of affected creditors reasonably expected to receive payment under the normal priority rules in liquidation.

The absolute priority rule implies that the plan may not deviate from statutory or contractual ranking to the detriment of any dissenting class, unless justified and not manifestly prejudicial. Thus, a junior class may only receive payment if the plan provides for the full payment of each senior class.

The reversed absolute priority rule requires that no class of affected parties receives or retains more than the full amount of their claims or interests under the plan.

These two rules are based not on the liquidation value but on the reorganisation value. If the plan generates a reorganisation surplus, the legislator considers that creditors should share in that value.

The (reversed) absolute priority rule significantly affects shareholders, who will often retain an interest only if they make a crucial contribution to the business or provide new financing.

Here too, the implementation period may not exceed five years. If not properly executed, a creditor may seek the revocation of the confirmed and homologated plan.

Role of management and supervision of management
Management (and directors) remains in office during the GRP. No insolvency practitioner is appointed to replace the management.

Only if the debtor or one of its corporate bodies has committed a manifest and serious fault may the court, at the request of an interested party or the public prosecutor, appoint a provisional administrator (voorlopig bewindvoerder) for the duration of the procedure. This administrator then replaces the debtor and its organs.

During the GRP, a delegated judge (gedelegeerd rechter) is appointed to oversee the progress of the proceedings.

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This delegated judge is also responsible for reporting to the court on the debtor's procedural requests (opening request and possibly request for the lifting of attachment and/or extension of suspension).

In the context of a private GRP, a restructuring expert (herstructureringsdeskundige) is appointed to assist in the preparation of the amicable settlement or the reorganisation plan. The expert participates in the negotiations with the creditors and ensures that the affected creditors are properly informed.

In the context of a public GRP through a collective agreement, any interested party may request the appointment of a restructuring expert to assist both the debtor and the creditors in the negotiations and the preparation of the plan.

Role of the court and other stakeholders (creditors and employees)

The court rules on the petition to open the GRP, hears all related requests (e.g. extension, lifting of attachment), confirms (homologeert) the amicable agreement or reorganisation plan in the context of a collective agreement, and closes the proceedings.

If the debtor encounters an obstructive creditor in the context of an amicable agreement, the court has the power to impose grace periods (respijttermijnen) on that creditor at the debtor's request.

Creditors are informed by the debtor about the opening of the proceedings and may contest the claims listed by the debtor before the court.

In an amicable agreement, the involved creditors have the opportunity to actively shape the content of the agreement. This is not the case for the reorganisation plan, which is prepared by the debtor. Creditors may only raise objections after the vote on the plan, in an attempt to convince the court not to confirm it – even if approved.

As for employees, it should be noted that they remain continuously employed. They must also be informed of the request to open the proceedings. In the event of significant restructuring (e.g. collective redundancies), social consultation is required. Employee wages may not be reduced as part of a reorganisation plan.

Collective debt settlement (Art. 1675/1 et seq. Judicial Code)

For natural persons who are not entrepreneurs, a separate restructuring procedure exists under the Judicial Code (Gerechtelijk Wetboek or Ger.W.): the collective debt settlement (collectieve schuldenregeling or CSR).

Under CSR, the debtor, under the supervision of the court, proposes to creditors an amicable repayment plan (minnelijke aanzuiveringsregeling or MAR). If no agreement is reached, the court may impose a judicial repayment plan (gerechtelijke aanzuiveringsregeling or GAR).

The purpose of the repayment plan is to restore the debtor's financial position, enabling them to repay their debts to the extent possible while ensuring a dignified standard of living for themselves and their family.

Admission requirements

CSR is available only to natural persons who are not entrepreneurs and who are unable to sustainably pay their dues or future debts, provided they have not wilfully caused their insolvency.

If the individual was previously self-employed, they may apply for CSR only after at least six months following the cessation of their business or, if declared bankrupt, after the closure of the bankruptcy.

To apply for CSR, the debtor must submit a petition to the labour court, electronically via the JustRestart platform. The law imposes formal requirements for the petition, which must be accompanied by several annexes.

Procedure and management

Once the CSR is opened, the debtor's assets become unavailable.

A debt mediator (schuldbemiddelaar) is appointed to prepare a draft MAR and to manage the debtor's assets.

The draft MAR outlines the plan for reducing the debt burden. A MAR may last up to seven years from the date of admission, unless otherwise ordered by the court.

If all creditors agree to the MAR, the mediator submits it for court approval.

If no agreement is reached, or if no MAR is concluded within the set timeframe (6 months), the court may impose a GAR by judgment. A GAR may last for up to five years. The measures included in a GAR depend on the debtor taking appropriate steps to facilitate or guarantee repayment.

Once an arrangement is in place, the debt mediator oversees its implementation. The mediator receives all

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income and makes payments. The debtor is given a living allowance for daily needs such as food, rent, and fixed costs.

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

A company under procedure of judicial reorganisation may obtain new financing with the aim of safeguarding the continuity of the business or supporting the implementation of the reorganisation plan. Such financing may originate from any party, including external financial institutions, shareholders, or affiliated companies.

Under Book XX of the Code of Economic Law (Wetboek Economisch Recht or WER), this financing may be granted super-priority status. Specifically, claims against the debtor arising from performance rendered during the judicial reorganisation procedure by the debtor's contractual counterparties – whether resulting from new obligations or from agreements existing at the time the procedure commenced – are considered estate debts (boedelschulden) in subsequent liquidation or bankruptcy proceedings, provided a close link exists between the end of the procedure of judicial reorganisation and the opening of such subsequent proceedings.

In such cases, these claims are paid in priority, ranking among the first in line for payment from the bankruptcy estate.

Where such new financing is included in a reorganisation plan for a large enterprise, the court must verify whether the financing is necessary for the implementation of the plan and does not unduly prejudice the interests of the creditors. For example, new security may not be granted to secure old debts.

5. 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?

A fundamental principle of the judicial reorganisation procedure is that the procedure itself, the suspension of payments, and the measures provided for in an approved amicable agreement or reorganisation plan (collective agreement) apply only to the debtor.

Third parties, such as guarantors, parent companies that have issued guarantees, or directors, remain fully liable in principle. Creditors may thus still pursue recovery from such third parties, unless explicitly agreed otherwise with the creditors concerned.

An exception applies to the (former) spouse or (former) legally cohabiting partner of the debtor (natural person) who is jointly liable for contractual debts connected to the debtor's professional activity.

Furthermore, a natural person who has granted a gratuitous personal guarantee (natuurlijke persoon-kosteloze persoonlijke zekerheidssteller) may request the court to extend the benefit of the suspension and the effects of the amicable agreement or reorganisation plan to them, if the court finds that the commitment is disproportionate to their income and assets.

A different framework applies in a collective debt settlement procedure. Personal guarantors (whether gratuitous or not) benefit from protection during the procedure until the approval or rejection of the amicable repayment plan. Moreover, a waiver granted in the context of an amicable repayment plan also applies to guarantors. Finally, gratuitous guarantors may be fully or partially released from their obligations if the court finds that their commitment is disproportionate to their income and assets.

Restructuring procedures do not result in an automatic discharge of directors from liability for past misconduct. Creditors (or the trustee, in the event of a subsequent bankruptcy) may still initiate liability claims for prior acts or omissions by the management. In fact, applying for a judicial reorganisation procedure may itself constitute misconduct by management if it was or should have been clear at the time of application that the business was beyond recovery. (see Section 15).

6. How do creditors organize themselves in these proceedings? Are advisory fees covered by the debtor and to what extent?

There is no formal creditors' committee in the judicial reorganisation procedure, nor in the collective debt settlement procedure. Each creditor generally acts individually. However, in practice, creditors may organise themselves voluntarily, for example:

- by appointing a common legal counsel or advisor; or
- in the case of a reorganisation plan for large enterprises, by cooperating within the same

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class (e.g. financial institutions or suppliers).

In principle, the advisory costs of individual creditors (such as lawyers, financial consultants, etc.) are borne by the creditors themselves. The debtor is not obliged to cover these costs.

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

Insolvency test (conditions for bankruptcy)

A business is considered bankrupt when two cumulative conditions are met:

1. Cessation of payments: the business is no longer able to regularly meet its due and payable debts; and
2. Frozen credit (geschokt krediet): third parties no longer have sufficient confidence to grant the business further credit or defer payment.

Obligation to file for bankruptcy

Within one month of fulfilling the bankruptcy conditions, the business must file for bankruptcy with the enterprise court.

This filing obligation lies with the governing body (e.g. director, manager) or, in the case of a natural person-entrepreneur, with the entrepreneur personally.

Consequences of (late) filing

If the business fails to file for bankruptcy or does so late, the directors/entrepreneur may be held liable under both civil and criminal law.

It should be noted that if a company meets the conditions for bankruptcy, the management may still opt to file for a judicial reorganisation procedure or for a transfer under judicial authority, provided that the continuity of the business is still feasible and that appropriate measures are foreseeable to address the threat. However, if this is not the case and the business is clearly beyond recovery, management must refrain from artificially prolonging the company's existence by initiating a judicial reorganisation procedure or a transfer under judicial authority, under penalty of directors' liability. (see Section 15).

8. What insolvency proceedings 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?

Belgian insolvency law provides for several types of liquidation procedures, in addition to restructuring proceedings:

1. Transfer under judicial authority (overdracht onder gerechtelijk gezag)
2. Private preparation of bankruptcy (also referred to as 'silent bankruptcy' or 'pre-pack')
3. Bankruptcy (faillissement)
4. Dissolution and liquidation (ontbinding en vereffening)

These are governed by the Code of Economic Law (Wetboek van Economisch Recht or WER) and the Companies and Associations Code (Wetboek van Vennootschappen en Verenigingen or WVV).

1. Transfer under judicial authority (Art. XX.84 et seq. WER)

The procedure of transfer under judicial authority (overdracht onder gerechtelijk gezag or OGG) aims to transfer all or part of a business's activities under court supervision, after which the remaining company is generally declared bankrupt. It is, therefore, in most cases, an organised step towards bankruptcy.

The OGG is a fully public procedure and entails a suspension period initially limited to four months, extendable up to a maximum of twelve months.

Admission requirements

The same admission criteria apply as for the judicial reorganisation procedure (see Section 3).

Initiative

The court may open the procedure upon request by the debtor (voluntary transfer), or, in certain cases, upon summons by the public prosecutor, a creditor, or any party with an interest in acquiring the business (forced transfer).

To initiate the procedure himself, the debtor must file a petition via the Central Solvency Register (Centraal Register Solvabiliteit or RegSol), along with the required annexes.

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Management

The judgment opening the procedure appoints a liquidation expert (vereffeningsdeskundige), who is responsible for organising and executing the transfer.

The liquidation expert leads the process, not the debtor. The debtor does not play an active role in this process, as the focus shifts to the expert managing the legal and practical aspects of the transfer. However, the management remains in place and operations continue as normal (as a 'debtor in possession').

2. Private preparation of bankruptcy or 'pre-pack' (Art. XX.97/1 et seq. WER)

The procedure of private preparation of bankruptcy is aimed at preparing a transfer of the business in a confidential setting before the formal declaration of bankruptcy ('pre-pack'). It is an organised step towards bankruptcy.

This procedure is entirely confidential and does not entail a suspension period.

Admission requirements

This preparatory procedure is open to debtors who consider themselves to be in a state of bankruptcy (see insolvency test under Section 7).

The debtor must demonstrate that this preparatory procedure (1) facilitates liquidation in a way that maximises returns to creditors and (2) preserves employment as far as possible.

Initiative

The court may open the procedure upon request by the debtor, filed via the Central Solvency Register (Centraal Register Solvabiliteit or RegSol).

Procedure and management

In the judgment opening the procedure, a prospective trustee (beoogd curator) and a prospective supervisory judge (beoogd rechter-commissaris) are appointed. The trustee supervises the transfer and must be involved in all negotiations, ensuring that the process complies with legal requirements. However, the debtor (e.g. management en board) retains control over the preparation of the transfer, before the transfer is finalised under judicial authority. The prospective supervisory judge oversees the actions of the prospective trustee.

The debtor is granted a 30-day preparation period, extendable to 60 days, during which negotiations may take place.

Once the transfer is prepared, the debtor files for bankruptcy, and the actual transfer is executed by the appointed trustee (previously the prospective trustee), subject to authorisation by the supervisory judge (previously the prospective supervisory judge).

3. Bankruptcy procedure (Art. XX.98 et seq. WER)

The bankruptcy procedure places the debtor's assets under the authority of a trustee (curator), who manages and liquidates the estate and distributes the proceeds to creditors.

Admission requirements

The bankruptcy procedure is available to enterprises (legal or natural persons) in a state of bankruptcy, meaning (see also under Section 7):

- sustained cessation of payments; and
- frozen credit (loss of confidence among creditors).

Initiative

Bankruptcy may be initiated by the debtor (mandatory filing within one month after satisfying the bankruptcy conditions) via the Central Solvency Register (Centraal Register Solvabiliteit or RegSol), or by summons from a creditor or the public prosecutor.

Management

Upon declaration of bankruptcy, a trustee (curator) is appointed to manage and liquidate the assets. The debtor loses control, and the trustee replaces the governing body. A supervisory judge (rechter-commissaris) oversees the actions of the trustee.

The duration of a bankruptcy procedure varies significantly depending on the complexity of the business, the number of creditors, the nature of the business, potential disputes, and the debtor's cooperation.

4. Dissolution and liquidation (Art. 2:70 WVV)

A business in financial difficulty may cease its activities via dissolution and liquidation. This may occur through a decision of the general meeting of shareholders (voluntary dissolution and liquidation) or by court order (judicial dissolution and liquidation).

Judicial dissolution and liquidation may be ordered for

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specific reasons, such as failure to file annual accounts (or multiple sets of accounts). Although this is not, strictly speaking, an insolvency-related ground, it is often invoked in practice in the case of distressed businesses.

Note: a deficit liquidation (deficitaire vereffening) is only permitted if the creditors retain confidence and accept partial payment. If not, bankruptcy is the only option.

Initiative

A business (only legal persons) may be dissolved voluntarily by the general meeting or by court order upon summons by the public prosector or another interested party.

Management

The decision to dissolve (by the general meeting or the court) includes the appointment of a liquidator (vereffenaar), who replaces the management. The liquidator realises the assets and pays off the liabilities.

Directors may be appointed as liquidators, which allows them more control over the process, but in complex cases, an external liquidator is preferred.

The duration of a dissolution and liquidation procedure varies depending on complexity of the company, the number of creditors, the nature of the activities, disputes, and the conduct of the former management.

9. 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?

Enforcement in case of a transfer under judicial authority

As in the judicial reorganisation procedure, a transfer under judicial authority (overdracht onder gerechtelijk gezag or OGG) entails a suspension of individual enforcement actions by creditors (see Section 3).

Attachments already carried out retain their preservative effect, but the court may lift them if this does not cause significant prejudice to the creditor.

If the scheduled date for the forced sale of seized assets falls within two months after the petition for OGG was filed, enforcement proceedings may continue. However, the court may order a suspension of the sale, either prior to or simultaneously with the decision to open the procedure, provided certain conditions are met.

Enforcement in case of private preparation of bankruptcy

The private preparation of bankruptcy does not affect the enforcement rights of creditors. Attachments remain possible. During the preparatory period, the debtor may also be summoned into bankruptcy and, consequently, declared bankrupt prematurely.

Enforcement in case of bankruptcy

From the date of the bankruptcy judgment, no legal action or enforcement measure against the debtor's movable or immovable assets may be initiated, continued, or carried out, except against the trustee. Individual creditors can no longer enforce their claims, for instance through attachment or execution.

All attachments imposed before the bankruptcy judgment are suspended. However, if the forced sale of seized movable property was scheduled and publicly announced prior to the judgment, the sale proceeds benefit the estate.

Exceptions apply for pledgees, mortgagees and creditors with special privileges.

Their enforcement rights are suspended only until the filing of the first report of verification of claims (proces-verbaal van verificatie van schuldvorderingen) drafted by the trustee (usually within one month of bankruptcy). Thereafter, they may enforce their rights against the secured property. However, if the interest of the bankruptcy estate requires it, and provided that the sale of movable assets does not prejudice secured creditors, the court may, upon request by the trustee, order an extension of the suspension of enforcement for a maximum of one year from the date of bankruptcy.

Pledgees falling under the special regime of the Financial Collateral Act (Wet Financiële Zekerheden) are not affected by the bankruptcy and retain their full enforcement rights.

Enforcement in case of dissolution and liquidation

During liquidation, individual enforcement actions are in principle not suspended, unless such action would violate the principle of equality of creditors. In general, this principle is not violated if enforcement is carried out by secured creditors. Enforcement by generally privileged or ordinary creditors may be blocked by action before the judge in charge of attachments.

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Such actions are not allowed if they would infringe the principle of equal treatment of creditors, which is typically the case in a deficit liquidation. In such cases, the liquidator may petition the judge in charge of attachments to uphold the equality of creditors.

With regard to pledgees under the special regime of the Financial Collateral Act (Wet Financiële Zekerheden), it is important to note that the above rules do not apply to them. They may enforce their pledge regardless of the existence of an insolvency proceeding (bankruptcy, judicial reorganisation, transfer under judicial authority, etc.).

Extraterritorial effects

In cross-border cases within the EU, Regulation (EU) 2015/848 on insolvency proceedings applies (Insolvency Regulation). Creditor enforcement rights are governed by the lex concursus, i.e. the law of the member state where the proceedings were opened (Art. 7(2)(f) of the Insolvency Regulation). As a result, foreign creditors must also comply with Belgian law and the above-mentioned rules.

The suspension of payment and enforcement actions applies to all assets of the debtor, since main insolvency proceedings opened in Belgium extend to all assets within the EU (universal effect).

An important nuance applies to rights in rem held by third parties. If the collateral is located in a member state other than the one where the insolvency proceedings are opened, the opening of the proceedings does not affect the secured right, regardless of the collateral or the nature of the secured claim (Art. 8 of the Insolvency Regulation).

In cross-border cases outside the EU, security rights may not be preserved in the same way (Art. 119, §2 of the Belgian Code of Private International Law – Wetboek van Internationaal Privaatrecht or WIPR).

10. How do the creditors, and more generally any affected parties, proceed in such proceedings? What are the requirements and forms governing the adoption of any reorganisation plan (if any)?

Affected parties in procedure of transfer under judicial authority

Creditors are notified of the opening of the transfer under judicial authority (overdracht onder gerechtelijk gezag or OGG). If creditors disagree with the amount for which they are listed by the debtor, they must consult the debtor and, failing agreement, submit a petition for dispute to the court.

The liquidation expert (vereffeningsdeskundige) must take creditors' rights into account when organising and executing the transfer.

Once the court has authorised the sale, the liquidation expert notifies creditors of the decision. Creditors may lodge an appeal (either opposition by third parties or appeal, depending on whether they were a party to the proceedings).

The rights and obligations of employees in an OGG are governed by Collective Labour Agreement (collectieve arbeidsovereenkomst or CAO) No. 102/2 of 19 December 2023. This includes prior information obligations and preservation of certain rights. The purchaser may choose which employees to retain, based on technical, economic, and organisational reasons, and without unlawful discrimination. Employment contracts may be modified insofar as changes relate to such reasons.

If several comparable offers are received, the court gives preference to the offer that ensures employment retention through a social agreement.

Employee representatives are heard during the procedure. Shareholders do not play an active or decision-making role in the OGG process.

There is no reorganisation plan in an OGG. The business is liquidated. Creditors are paid in accordance with their ranking from the proceeds of the transfer to the extent possible. The remaining company, essentially a shell, is then, in principle, declared bankrupt.

Affected parties in the procedure of private preparation of bankruptcy

Creditors are not notified of the opening of the procedure of private preparation of bankruptcy and are not involved in the process. Their interests are, however, to some extent protected by the requirement that the proposed transfer must aim to maximise distribution to creditors.

Employees are protected by the requirement that the transfer must preserve employment as much as possible. Before the realisation of the transfer (post-bankruptcy), employees and/or their representatives must be informed in accordance with CAO No. 32bis, which governs prior information obligations and preservation of certain rights. The acquirer may select which employees to retain.

Shareholders do not have to be involved in this

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procedure.

There is no reorganisation plan. The procedure leads, in principle, to bankruptcy.

Affected parties in the bankruptcy procedure

After the opening of bankruptcy, the trustee invites creditors to submit their claims via the Central Solvency Register (Centraal Register Solvabiliteit or RegSol) within a deadline set by the court (usually 30 days).

All creditors seeking payment, including those with preferential rights, must file their claims, except for the estate creditors (e.g. curator's fees, post-judgment debts under ongoing agreements).

The trustee processes, verifies, and may contest claims. This process is recorded in three reports of verification of claims filed within the first year after bankruptcy.

Progress of the procedure is communicated to creditors and stakeholders through an annual report of the trustee.

The supervisory judge (rechter-commissaris) may convene a meeting of creditors or a group of them at any time and must do so at the request of creditors representing more than one-third of the claims.

Upon completion of the estate liquidation, a creditors' meeting is held, convened by the trustee and attended by the creditors and the bankrupt party.

The final accounts (assets, costs, fees, estate debts, and distribution by ranking) are presented and closed.

Employees may file claims for unpaid wages, possibly with support from trade unions. For certain claims, they benefit from a general preferential status.

In the case of a post-bankruptcy transfer, the acquirer may choose which employees to take over. CAO No. 32bis governs the employee rights and information obligations.

Shareholders are not directly involved in the bankruptcy and are last in line for distribution (if any).

There is no reorganisation plan. The business is liquidated, and creditors are paid in accordance with their ranking, to the extent possible.

Affected parties in the procedure of dissolution and liquidation

Upon commencement of liquidation, the liquidator contacts all known creditors to inform them that the company has been dissolved. Each creditor is informed of the amount recorded in the company's accounts and asked to confirm it. Creditors are also asked to declare any preferential rights. A deadline is set. If no response is received, the liquidator will assume the recorded amount is correct and that no preferential rights apply. The liquidator reviews and may dispute creditors' responses.

If the liquidator commits errors in the performance of the mandate causing harm to creditor rights, creditors may hold the liquidator liable.

The liquidator may terminate employment contracts immediately or continue them for the duration of the notice period if useful for the liquidation. If the notice period is excessive, contracts may be terminated and new agreements concluded. Employees may be rehired on a fixed-term or specific-project basis, or via an agency.

In the event of collective dismissal, CAO No. 24 applies, including relevant information obligations.

If the liquidator transfers the business, social law provisions governing employee rights in business transfers, such as CAO No. 32bis, must be respected.

If contracts are terminated, employees are invited to submit claims for severance or other compensation under their employment agreements. For certain claims, employees benefit from a general preferential status.

Shareholders have an oversight function through the annual general meeting, where they review the liquidation report and accounts. Except in judicial liquidation, it is the shareholders who decide on the opening and closing of the liquidation.

There is no reorganisation plan. The company is liquidated.

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

A situation of concurrence (samenloop) arises when multiple creditors simultaneously assert claims against the assets (or part thereof) of their common debtor.

This gives rise to conflicts that must be resolved through a ranking arrangement, which determines the order in

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which creditors are paid from the estate.

The process begins with the so-called separatists, who are not part of the general estate because they assert rights over a specific asset. These include mortgagees, pledgees, and creditors with special privileges.

Conflicts between these separatists claiming the same asset are resolved based on the principle of priority: the security interest that became opposable first (e.g. by registration) takes precedence. Additional specific rules are set out in the Pledge Act (Pandwet) and the Mortgage Act (Hypotheekwet).

Subsequently, the distribution of the estate is generally carried out in three steps:

1. Deduction of procedural costs, based on the privilege of court costs, and estate debts (boedelschulden);
2. Payment of generally privileged creditors, according to the statutory order of priority;
3. Pro rata distribution among ordinary unsecured creditors.

Generally privileged creditors include, among others, employees and the National Social Security Office (Rijksdienst voor Sociale Zekerheid or RSZ), with employees ranking ahead of the RSZ.

Creditors who provided funding to a company in judicial reorganisation or transfer under judicial authority (so-called DIP financing), may be considered super-privileged in subsequent bankruptcy or liquidation proceedings, provided a close link exists between the two procedures. (see under Section 4) Subordination between creditors is possible through subordination agreements. These agreements are opposable against third parties only if clearly and explicitly agreed in writing prior to the bankruptcy or liquidation.

12. 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?

Acts or transactions carried out by the debtor can be challenged under certain conditions.

Outside bankruptcy proceedings, creditors may initiate a general law *actio pauliana* to challenge a transaction that harms their recourse rights. This requires that the act be abnormal, that the debtor and, where applicable, the third party knew or ought to have known of the harm to creditors, and that the creditor's claim pre-dated the act.

If successful, the act is rendered not opposable against the creditor who initiated the action. The validity of the transaction between the original parties is unaffected, but the creditor may still seize the asset in the hands of the third party. Any residual proceeds after enforcement will belong to the third party, who may in turn seek recourse against the debtor, albeit often without success due to insolvency.

Only parties holding the capacity of creditor – regardless of privilege or security – may initiate such actions (Cass. 11 April 1958). This action may be brought at any time by a creditor, subject to a limitation period of 10 years from the date of the challenged act.

This action remains available during a judicial reorganisation procedure or during a procedure of transfer under judicial authority, even for acts committed during the suspension period, as the *actio pauliana* concerns an asset that is no longer part of the debtor's estate.

After a bankruptcy is declared, the general law *actio pauliana* is no longer available, as it is accessory to individual recourse rights. Instead, a specific bankruptcy *pauliana* (Art. XX.114 Code of Economic Law – *Wetboek van Economisch Recht* or *WER*) applies, which may only be brought by the trustee, acting in the collective interest of all creditors.

The burden of proof lies with the trustee, who must demonstrate fraud by the debtor, prejudice to the estate, and, where applicable, complicity of the third party. At least one claim in the estate must have existed at the time of the disputed act.

The trustee exercises the bankruptcy *pauliana* in the interest and on behalf of the body of creditors. If the conditions for the bankruptcy *pauliana* are met, the court is required to declare the challenged act non-opposability against the estate (mandatory non-opposability).

The law further facilitates challenges by listing specific transactions that are presumed to be prejudicial and may be declared not opposable if performed after cessation of payment, thus during the 'suspect period' (the 'simplified *pauliana*').

The suspect period (*verdachte periode*) refers to the period between cessation of payments and the bankruptcy judgment, if applicable. Under Belgian law, the debtor is presumed to have ceased payments as from the date of the bankruptcy judgment, or from the date of

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death if the judgment is issued posthumously. This date may only be backdated by the court if serious and objective circumstances unequivocally demonstrate that payments had ceased prior to the judgment. However, the judgment may not establish cessation of payments more than six months before the date of the bankruptcy judgment, unless it concerns a legal person dissolved more than six months before the bankruptcy, whose liquidation has not been concluded and where there are indications that the dissolution was intended to prejudice creditors. In such cases, the date of cessation of payments may be set on the date of the dissolution resolution.

Transactions carried out by the debtor during the suspect period may be declared not opposable against the estate, if they meet the conditions of the first simplified *pauliana* (Art. XX.111 WER):

- Gratuitous transfers and transactions for inadequate consideration;
- Payments of unmatured debts, and non-cash payments of due debts;
- Mortgages and pledges granted for prior debts.

The burden of proof on the trustee is alleviated here, as the acts referred to are presumed to be prejudicial to the creditors. Furthermore, the trustee is not required to establish fraudulent intent.

In this context too, non-opposability is mandatory. However, non-opposability does not arise automatically. It is for the trustee to seek a declaration of non-opposability before the court.

A second simplified *pauliana* provides that all other payments made by the debtor on account of due debts, and all transactions for value (*onder bezwarende titel*) entered into by the debtor during the suspect period, may likewise be declared not opposable if the persons who received something from the debtor or transacted with him were aware of the cessation of payments (Art. XX.112 WER).

For the purpose of this provision, it suffices that the third party knew or ought to have known that their counterparty had ceased to pay. Fraudulent intent is not required. However, such knowledge must be precise and certain. In addition, it is, of course, required that the estate has been prejudiced.

In this case, non-opposability is optional. The court may assess whether it deems the non-opposability appropriate.

Pursuant to the final simplified *actio pauliana* (Art. XX.113 WER), rights of mortgage, privilege and security over movable property which have been validly created may be registered or recorded up until the date of the bankruptcy judgment. Registrations or recordings made after the date of cessation of payments may be declared not opposable if more than fifteen days have elapsed between the date of the instrument giving rise to the mortgage, privilege, or security, and the date of the registration or recording.

Here too, non-opposability is optional.

Moreover, certain transactions are explicitly excluded from the aforementioned simplified *actio pauliana*'s, including (i) legal or contractual securities granted by the creditor during the suspension period in the context of a judicial reorganisation by collective agreement or a transfer under judicial authority, (ii) payments made during the suspension period in such contexts, (iii) any amicable agreement or acts performed in execution thereof, as well as (iv) payments made by the debtor in the implementation of the reorganisation plan.

These excluded transactions may still fall within the scope of the general *actio pauliana*, albeit with a heavier burden of proof.

In a **liquidation** procedure, thus outside of bankruptcy, only the general *pauliana* (*gemeenrechtelijke pauliana*) is possible. The right to bring a paulian claim against acts of a company in liquidation does not lie with the liquidator, since the liquidator, on the one hand, does not represent the creditors and therefore cannot exercise their remedies, and on the other hand, acts as an organ of the company and thus identifies with the debtor-company. In the liquidation of a company, only the company's creditors may bring a paulian claim against acts of the company in liquidation.

The general *actio pauliana* has relative effect, as mentioned above, meaning that the contested act is only not opposable to the creditor bringing the claim. The asset thus does not revert to the estate of the company in liquidation, so that the acting creditor is not subject to the concurrence.

The general paulian claim remains possible even after the debtor has been admitted to collective debt settlement. However, the proceeds or effects of bringing such a claim must accrue to the estate.

13. How are existing contracts treated in

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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?

Judicial reorganisation (GRP) and transfer under judicial authority (OGG)

In a judicial reorganisation procedure (*procedure van gerechtelijke reorganisatie* or GRP) or a procedure of transfer under judicial authority (*overdracht onder gerechtelijk gezag* or *OGG*), the enterprise retains control over its assets and contracts.

Ongoing agreements remain in force in principle.

Counterparties are obliged to fulfil their contractual obligations and may not terminate the agreement on the sole basis of the procedure, unless:

- the debtor fails to perform its obligations and does not remedy its failure within 15 days of formal notice; or
- a lawful ground for termination exists independently of the reorganisation.

A contractual clause allowing termination due to the opening of a GRP is unenforceable and prohibited by law.

As from the opening of the proceedings, the debtor may unilaterally suspend performance of its contractual obligations for the duration of the suspension, provided this is notified within 8 days of the opening of the proceedings, and provided that the reorganisation or transfer of the undertaking necessarily requires it.

Any claim for damages arising from such suspension is subject to the suspension of payments.

The debtor's right to suspend contractual obligations does not apply to employment contracts.

If the debtor exercises this right, the counterparty may suspend its own obligations but may not terminate the contract solely on the basis of the debtor's unilateral suspension.

As long as the agreement is not terminated, its provisions remain in force.

Note that if a retention of title has been agreed, it may not be exercised by a creditor during the suspension of payments. A third party holding a retention of title who is not a creditor is, however, not subject to the suspension.

Statutory set-off remains possible, provided the statutory conditions are met, as there is no concurrence and thus no limitation on enforcement means. Conventional set-off is permitted provided that the agreement and both claims to be set off predate the GRP or OGG, and the counterparty is a legal person or a natural person acting in the course of business.

For set-off between a claim existing prior to the opening of the GRP or OGG and a claim that arose during the GRP or OGG, a special rule applies: it is only allowed if the claims are sufficiently connected.

Collective debt settlement

Ongoing agreements are not terminated by the opening of a collective debt settlement.

Similarly, the contracts may not be terminated or left unperformed.

Retention of title may always be invoked by the relevant creditor. No specific procedural requirements apply.

Statutory set-off is possible if, in addition to meeting the statutory conditions, it concerns related claims that both existed prior to the opening of the collective debt settlement. Conventional set-off is not permitted, as the debtor is not considered an enterprise.

Bankruptcy

In principle, ongoing agreements are not terminated by the opening of a bankruptcy.

The trustee decides whether to continue or terminate ongoing contracts.

Unilateral termination is not freely permitted – it must be required in the interest of the estate. The decision must not prejudice opposable proprietary rights of third parties.

The counterparty may request the trustee to decide within 15 days. If no decision is taken, the contract is deemed terminated upon expiry of that term.

If the trustee opts to continue performance of a contract, debts incurred under the contract become estate debts (*boedelschulden*).

Obviously, the counterparty may itself terminate the contract. In most cases, the agreement will include a termination clause in the event of bankruptcy. Such clauses are valid.

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There is a specific regime for the termination of employment contracts. The trustee may terminate them upon the bankruptcy judgment, without following ordinary labour law procedures. If the trustee decides to continue part or all of the business temporarily (e.g. pending a buyer), staff may be rehired – including former employees – in which case normal labour law rules apply.

As long as the contract is not terminated, its provisions remain in force. Where a retention of title has been agreed, the right of reclamation may be exercised up to the date of the first official report of verification of claims (approximately within one month of bankruptcy judgment).

Statutory set-off is possible if, in addition to meeting the statutory conditions, it concerns related claims that both existed prior to the opening of the bankruptcy. Conventional set-off is permitted provided that the agreement and both claims to be set off predate the bankruptcy judgment, and the counterparty is a legal person or a natural person acting in the course of business.

Private preparation of bankruptcy

Ongoing contracts and all rights therein remain unaffected (at least until the bankruptcy judgment).

Dissolution and liquidation

As a principle, ongoing agreements remain unchanged.

Of course, termination will eventually be necessary due to the cessation of activities. The liquidator must do so under general contract law.

The counterparty may unilaterally terminate the agreement. Clauses allowing termination due to dissolution and liquidation are valid.

Creditors may exercise their retention of title rights. No special procedural rules apply.

Statutory set-off is possible if, in addition to meeting the statutory conditions, it concerns related claims that both existed prior to the dissolution of the company. Conventional set-off is permitted provided that the agreement and both claims to be set off predate the decision to dissolve the company, and the counterparty is a legal person or a natural person acting in the course of business.

14. 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?

Sale within the framework of a procedure of judicial reorganisation

A reorganisation plan may provide for the transfer of all or part of the business.

There are no statutory minimum conditions for such transfer, but terms must be market-based to avoid challenges by third parties, such as creditors.

This transfer does not affect existing security rights unless individual consent is obtained from the relevant secured creditors. Besides, the purchaser is jointly and severally liable for outstanding tax and social security debts attached to the business. This joint and several liability can, however, be avoided by obtaining clearance certificates from the National Social Security Office (*Rijksdienst voor Sociale Zekerheid* or *RSZ*) and the Federal Public Service Finance (*Federale Overheidsdienst Financiën* or *FOD Financiën*), each confirming that no social security or tax debts are outstanding at the time of the acquisition.

Sale within the framework of a transfer under judicial authority procedure

The appointed liquidation expert (*vereffeningsdeskundige*) organises and executes the transfer as ordered by the court.

He solicits offers and must prioritise the preservation of the whole or part of the business, while taking into account creditors' rights.

The expert may conduct a public or private sale. In the case of a private sale, he defines the procedure in the call for offers, including the deadline for submission and whether successive bidding rounds will be allowed. They may also request bidders to submit guarantees regarding employment, purchase price payment, and business continuity plans.

An offer will only be considered if the price equals or exceeds the estimated liquidation value in bankruptcy or liquidation. The liquidation value is therefore the minimum.

Where an offer is submitted by a party who exercised

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control over the business in the six months preceding the opening of the procedure – and who holds essential rights for the business's continuity (e.g., intellectual property) – that offer may only be considered if those rights are made equally accessible to all other bidders.

A prospective buyer may indicate which ongoing contracts (that are not *intuitu personae*) they wish to acquire in full, if their offer is accepted. By continuing ongoing contracts, the new owner will assume all related obligations, including any outstanding liabilities arising therefrom.

The liquidation expert drafts one or more proposals for concurrent or successive sales, justifying the transaction and attaching draft deeds.

These proposals are filed with the Central Solvency Register (*Centraal Register Solvabiliteit* or *RegSol*) and notified to the delegated judge, the debtor, and the court.

Where a private sale is proposed, secured creditors whose rights have been registered in the context of the procedure must be summoned at least eight days before the hearing by registered mail. These creditors may request the court to impose conditions, such as a minimum price.

Where multiple comparable offers exist, the court must favour the bid that guarantees employment retention by way of a social agreement.

Following court approval, assets are transferred free of security rights and privileges, which instead attach to the sale proceeds, to be distributed proportionally among entitled creditors.

Sale within the framework of bankruptcy

No minimum conditions are required for the transfer of assets following bankruptcy.

The trustee organises the sale and may opt for either a public auction or a private sale.

For the sale of immovable property – whether by private agreement or public auction – the trustee must request prior authorisation from the court. Mortgage creditors and preferential creditors are summoned to the hearing. If authorisation is granted, the asset is transferred free of all existing security rights and other encumbrances, even without individual consent from secured creditors.

The sale of movable assets only releases security rights if the relevant secured creditors have given their consent. If the trustee proceeds without such consent, the creditor's rights are transferred to the proceeds by way of subrogation in rem (*zakelijke subrogatie*), without prejudice to the potential liability of the trustee.

For the sale of movable property exceeding a certain value, prior court approval is required. If authorisation is granted, the asset is transferred free of all existing security rights and other encumbrances, regardless of whether individual consent from the secured creditors has been obtained.

In principle, the trustee may only proceed with the sale of assets after the first verification report of claims (*proces-verbaal van verificatie van schuldvorderingen*), as from that point onward there is more clarity regarding the goods and the security rights attached to them. For perishable goods or those susceptible to rapid depreciation, the trustee may, however, request the supervisory judge to authorise an early sale before the first verification report is drawn up. Such 'immediate sales' (*dadelijke verkoop*) also result in the transfer of the asset free of security rights, which then attach to the proceeds.

The law also provides for the judicial confirmation (*bekrachtiging*) of the transfer of a going concern, whether concluded before the bankruptcy or carried out by the trustee. Upon request, the trustee seeks confirmation from the court. Such confirmation enables the business to be transferred free of security rights and encumbrances. Note, however, that such transfer triggers the application of Collective Labour Agreement (*Collectieve Arbeidsovereenkomst* of ***CAO***) No. 32*bis*, which includes rules on the buyer's right to choose which employees to retain, information obligations, and preservation of certain employment rights.

Sale within the framework of liquidation

In principle, no minimum conditions apply to the post-liquidation sale of assets. The liquidator organises the sale, either publicly or privately.

The sale of the assets – public or private – does not, in principle, affect existing security rights without the individual consent of the secured creditor. However, the liquidator may request court authorisation for the sale of immovable property. Mortgage and preferential creditors will then be summoned. If authorisation is granted, the asset is transferred free of all existing security rights and other encumbrances, even without the individual consent of the secured creditors.

The sale of movable property only releases security rights if the relevant secured creditors have given their consent.

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Otherwise, their rights transfer to the proceeds by subrogation in rem. The liquidator may be held liable for any unauthorised sale.

Credit-bidding

Credit bidding is legally permissible under Belgian law but remains rare in practice.

Academic commentary in Belgium is generally critical of the mechanism due to the imbalance it creates: unlike external bidders who must pay cash, the credit bidder may bid using the full nominal amount of a claim which may only have limited real value due to the debtor's insolvency. The mechanism allows a bidder to submit a so-called *full credit bid* based on a potentially overstated claim value.

Pre-packaged sales

Although pre-pack sales were already used in practice, as of 1 September 2023, Belgian law explicitly only recognises the so-called pre-pack procedure under the specific regime of the private preparation of bankruptcy (*besloten voorbereiding van het faillissement*).

This procedure allows for a preparatory phase of 30 days (extendable up to 60 days), during which a transfer may be prepared. After the bankruptcy is declared, the prepared transfer is implemented by the trustee, after the authorisation of the supervisory judge.

15. 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 and if so can they be covered by insurances?

In Belgium, directors are required to act diligently, especially where the company is facing financial difficulties. Under Belgian law, directors may be held liable on various grounds. Director liability most commonly arises in the context of the company's bankruptcy, when creditors, shareholders and/or trustees raise the question whether the acts or omissions of the board contributed to the company's insolvency. Directors may also face criminal sanctions in connection with the bankruptcy.

The first ground for liability concerns 'ordinary management faults', as set out in Article 2:56, paragraph 1 of the Belgian Companies and Associations Code (*Wetboek van Vennootschappen en Verenigingen* or *WVV*), and in Article 6.5 of the Civil Code. This involves conduct that a normally prudent and diligent director would not reasonably have committed. Both the trustee and third parties who have suffered damage may bring a claim on this basis. Liability is not automatic: a management fault must be established, as well as a causal link with the damage. A conviction may lead to liability for the damage caused, which in practice often corresponds to (part of) the company's debts, insofar as a causal link can be proven. Examples include failure to file the annual accounts, failure to maintain proper accounting records, or non-payment (or late payment) of wages or social security contributions.

A second basis of liability arises from violations of the articles of association or the WVV (Art. 2:56, paragraph 3 WVV). Here too, claims may be brought by the trustee or individual creditors. Liability is not automatic, but such violations are harder to refute. It must also be shown that the breach caused damage. However, in cases involving the failure to file annual accounts, liability is presumed: third-party losses are presumed to result from such failure. Again, a conviction may result in liability for the damage suffered, typically corresponding to (part of) the company's debts, where fault and causal link with the damage suffered are established. Relevant examples include failure to file annual accounts, failure to keep proper books, or failure to apply the alarm bell procedure. Under the alarm bell procedure, directors are required to convene the general meeting if, as a result of losses, the company's net assets fall below half the subscribed capital. Failure to comply with this obligation may lead to significant director liability: where the meeting is not convened, third-party losses are presumed to result from this failure.

A third ground for liability arises in case of manifestly gross faults contributing to the bankruptcy (Art. XX.225 of the Code of Economic Law – *Wetboek van Economisch Recht* or *WER*). The trustee can bring this claim, and in case of inaction of the trustee, creditors may also initiate proceedings. Again, liability is not automatic: one must establish the existence of manifestly gross mismanagement that effectively contributed to the bankruptcy and damages. A conviction may result in liability for (part of) the company's debts, up to the shortfall in the bankruptcy. Examples include the misappropriation of company funds, or a total lack of oversight of day-to-day operations.

A fourth ground concerns non-payment of social security contributions (Art. XX.226 WER). A director may be held liable for all or part of the social security debts

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outstanding at the time of the bankruptcy judgment, including late-payment interest, if during the five years preceding the bankruptcy the director (whether *de jure* or *de facto*) was involved in at least two bankruptcies or liquidations where social security debts remained unpaid. Such claims may be brought by the National Social Security Office (*Rijksdienst voor Sociale* Zekerheid or *RSZ*) or the trustee.

A fifth basis for liability concerns so-called 'wrongful trading' (Art. XX.227 WER), i.e. the continuation of business activities when there was no reasonable prospect of avoiding bankruptcy. Only the trustee may bring such a claim. In this case, liability is automatic: once the fault is established, the damage and causal link are legally presumed. A conviction may result in liability for (part of) the company's debts, up to the amount of the shortfall in the bankruptcy.

All of these liability rules apply not only to *de jure* directors, but also to *de facto* directors – that is persons who effectively direct the company's operations without having been formally appointed.

Finally, it should be noted that directors – including *de facto* directors – may also incur criminal liability under Belgian law. For example, late filing for bankruptcy (i.e. not within one month after cessation of payments) may be punishable if it can be shown that the delay was intentional and aimed at postponing the bankruptcy (Art. 489bis, 4° of the Criminal Code). Failure to pay wages may also be criminally prosecuted (Art. 162 of the Social Criminal Code).

In light of these potential liabilities, directors must, during times of financial distress, regularly assess whether the company is in fact bankrupt, and whether recovery measures could still be useful or if the filing for bankruptcy should be promptly initiated. Employees must be paid up until the end, and excessive reliance on credit from public creditors should be avoided. Transactions must be handled with care, and proper accounting records must be kept at all times.

Article 2:57 WVV provides for a cap on director liability. However, this cap applies only in narrowly defined circumstances. It does not apply in cases of (i) minor fault if habitual rather than incidental, (ii) gross negligence, (iii) fraudulent intent, or (iv) joint and several liability for tax or social debts. In practice, this cap only applies to incidental minor faults.

Directors may obtain protection through D&O insurance (directors & officers liability insurance), which covers personal liability for acts committed in the exercise of their mandate, excluding, among others, intentional fraud and criminal convictions.

A special liability ground in the context of bankruptcy is the liability for manifestly insufficient starting capital, also known as founders' liability (*oprichtersaansprakelijkheid*). Before incorporation, the founders must draw up a financial plan and submit it to the notary. If the company is declared bankrupt within three years of incorporation, and the capital was manifestly inadequate for the normal operation of the intended activities over a minimum period of two years, the founders are jointly and severally liable for the company's obligations. This specific liability applies to all those who 'appear' at the time of incorporation.

16. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions? In which context could the liability of the directors be sought?

No restructuring or insolvency procedure results in an automatic discharge of directors' liability, nor of the liability of other involved parties.

Even in the context of a successfully adopted reorganisation plan, there is no specific exemption from liability for past actions.

Directors remain fully liable for any misconduct committed prior to or during the procedure, as well as for failures to comply with statutory obligations, such as proper bookkeeping and timely filing for bankruptcy.

In the context of bankruptcy, the types of liability mentioned under Section 15 may again become relevant. In any subsequent bankruptcy, a discharge (kwijting) granted to a director is only opposable with regard to liability for ordinary management faults and liability for breaches of the Belgian Companies and Associations Code (Wetboek van Vennootschappen en Verenigingen or WVV), but not for the other (bankruptcy) liabilities.

Outside the context of bankruptcy (e.g. in judicial reorganisation, transfer under judicial authority, or liquidation), liability for ordinary management faults and breaches of the WVV remains possible, unless discharge has been granted for the relevant financial year. Criminal liability may also still be incurred. Directors, managers and other executives must at all times act in the best interests of the company.

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17. 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?

Belgium has adopted neither the UNCITRAL Model Law on Cross-Border Insolvency nor the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments. The applicable rules are therefore as follows.

Companies incorporated in the European Union

The European Insolvency Regulation (EU) 2015/848 applies to insolvency proceedings where the centre of main interests (COMI) is situated within the European Union.

The main insolvency proceeding must be opened in the member state where the company's COMI is located (Art. 3 of the Insolvency Regulation). For companies and legal persons, the COMI is rebuttably presumed to be the place of the registered office, unless that registered office has been transferred to another member state within the three months prior to the filing of the request.

For natural persons acting in the course of business, the COMI is rebuttably presumed to be the place of the principal place of business (hoofdvestiging), unless this was transferred to another Member State within the three months preceding the filing.

For natural persons not acting in the course of business, the COMI is rebuttably presumed to be the habitual residence (gebruikelijke verblijfplaats), unless this was moved to another member state within the six months prior to the filing.

The Insolvency Regulation provides that where a court in an EU member state opens main insolvency proceedings, such proceedings must be recognised in all other member states without the need for any further judicial intervention or formalities in the recognising member state (Art. 19.1 of the Insolvency Regulation). The only ground for refusing recognition of such proceedings is incompatibility with the recognising state's public policy (Art. 33 of the Insolvency Regulation).

Companies incorporated outside the European Union

For the recognition of insolvency proceedings opened outside the EU, and thus not falling under the scope of the Insolvency Regulation, the Belgian Code of Private International Law (Wetboek van Internationaal Privaatrecht or WIPR) applies.

In such cases, insolvency proceedings are not automatically recognised. Instead, exequatur proceedings are required to render a foreign court decision enforceable in Belgium (Art. 22-23 WIPR). Recognition and enforcement of a foreign judgment opening insolvency proceedings may also be refused on various grounds, including manifest incompatibility with Belgian public policy (Art. 25 WIPR).

In addition, specific requirements apply for recognition (Art. 121 WIPR). For instance, a main insolvency proceeding will only be recognised if it has been opened in the country of the debtor's principal establishment (voornaamste vestiging), while territorial proceedings will only be recognised if opened in the country where the debtor has an establishment (vestiging). Recognition in the latter case will be limited to assets located in the state where the proceeding was opened at the time of commencement.

18. 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.

To our knowledge, there have been no challenges to the recognition of English proceedings in Belgium since the Brexit implementation date.

19. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions? Which country does your jurisdiction have the most cross-border problems with?

Debtors incorporated in EU Member States

For debtors incorporated in other EU Member States, international jurisdiction to open insolvency proceedings must be determined in accordance with the European Insolvency Regulation 2015/848.

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Pursuant to Article 3 of the Insolvency Regulation, the courts of the member state within the territory of which the debtor's centre of main interests (COMI; see under Section 17) is located shall have jurisdiction to open insolvency proceedings. Such proceedings have universal effect, meaning they apply to all the debtor's assets situated within the EU. Accordingly, if a debtor's COMI is located in Belgium, the Belgian court may open the insolvency proceedings.

The applicable law is then Belgian law, and the same admission conditions apply as for Belgian debtors.

If main insolvency proceedings have already been opened in another member state, the Belgian court may only open proceedings in respect of that debtor if the debtor has an establishment (vestiging) in Belgium. The effects of such proceedings are then limited to the debtor's assets located within Belgian territory (Art. 34 of the Insolvency Regulation). Where such proceedings are opened prior to the main proceedings, they are considered territorial proceedings (Art. 3(4)). If opened after the main proceedings, they qualify as secondary proceedings (Art. 3(3)).

Debtors incorporated in non-EU countries

The Belgian Code of Private International Law (Wetboek van Internationaal Privaatrecht or WIPR) applies to all situations involving a connection to Belgium and a non-EU State. The WIPR refers to the Insolvency Regulation 2015/848 and confirms its rules, including the distinction between main and territorial proceedings.

According to the WIPR, a main insolvency proceeding may be opened in Belgium where the debtor's COMI is located in Belgium. The concept of COMI is interpreted in line with EU law. (see under Section 17)

When the debtor's COMI is situated outside the EU (and the Insolvency Regulation does not apply), insolvency proceedings may still be opened in Belgium if the debtor's principal establishment (voornaamste vestiging), registered office (statutaire zetel) or residence (woonplaats, for natural persons) is located in Belgium (Art. 118, §1, 1° WIPR).

Furthermore, if the COMI is outside the EU, a territorial proceeding may be opened in Belgium if the debtor has an establishment (vestiging) there (Art. 118, §1, 2° WIPR).

Certain limitations or constraints arise where main proceedings are already pending in another country (inside or outside the EU). In such cases, Belgium must confine itself to a secondary proceeding, limited to the debtor's Belgian establishment and not extending to all assets worldwide.

There are no specific jurisdictions with which Belgium experiences notable cross-border insolvency or restructuring issues. Thanks to the harmonisation of rules within the European Union, particularly through the Insolvency Regulation 2015/848, recognition and coordination procedures function smoothly and effectively.

Outside the EU, however, the recognition of foreign insolvency proceedings may be problematic due to the absence of treaties or reciprocity.

20. How are groups of companies treated on the restructuring or insolvency of one or more members of that group? Is there scope for cooperation between office holders? For EU countries only: Have there been any changes in the consideration granted to groups of companies following the transposition of Directive 2019/1023?

In Belgian insolvency law, there is no formal framework of insolvency proceedings for corporate groups. Each company within a group is treated separately. There is no automatic consolidation of debts, and each group member retains its own insolvency status and separate estate.

The Belgian legislator has so far limited itself to mere coordination when multiple proceedings are initiated within the same group. For example, the court that has jurisdiction over the insolvency proceedings concerning one company is also competent to hear proceedings involving an affiliated company. The court may also appoint the same insolvency professionals across the different files (e.g. the same trustee and supervisory judge, or delegated judge and restructuring or liquidation expert, as applicable).

This coordination may facilitate, among other things:

- the exchange of information,
- the joint sale of assets,
- the alignment of reorganisation plans (within judicial reorganisation proceedings).

However, this competence is discretionary and thus subject to the court's assessment.

The transposition of the Restructuring Directive 2019/1023 in national law has brought only limited changes in this respect. Since the legislative amendment

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of 7 June 2023, the application to open judicial reorganisation procedure must include the identification details of affiliated companies. Furthermore, when assessing whether the threshold for a large enterprise is met in the context of judicial reorganisation, all companies with which a relationship of affiliation exists are taken into account.

The implementation of Directive (EU) 2026/799 may also provide an opportunity for the Belgian legislator to further consider the development of a more integrated framework for the restructuring of corporate groups, although the Directive itself does not yet establish such a framework.

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

Belgium has not adopted the UNCITRAL Model Law on Enterprise Group Insolvency (2019). At present, no formal legislative initiative aimed at its implementation has been announced.

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

Insolvency law in Belgium has undergone substantial reform in recent years and continues to evolve. A key milestone was the transposition of the European Restructuring Directive (Directive (EU) 2019/1023) by the Act of 7 June 2023. This Act entered into force on 1 September 2023 and introduced significant structural changes, including the confidential judicial reorganisation procedure, the judicial reorganisation procedure for large undertakings with class formation, class voting and cross-class cram-down, as well as the confidential preparation of bankruptcy proceedings (pre-pack).

Reforms are also ongoing in the area of security interests. The new Civil Code is gradually being expanded with a new Book 9 on security interests. Title 1, “Personal Security Interests"(Persoonlijke Zekerheden), entered into force on 1 January 2026. The further development of this book, including the rules on security interests in rem, is currently being prepared.

In addition, legal doctrine and practice are increasingly focusing on how corporate groups can be restructured more efficiently within a single integrated legal framework.

At EU level, a further step was recently taken towards the harmonisation of insolvency law. Directive (EU) 2026/799 was published on 1 April 2026. It introduces, among other things, a European framework for creditors' committees, avoidance actions, asset tracing and recovery, pre-pack proceedings and directors' duties where a company is threatened by insolvency. Member States, including Belgium, must transpose the Directive into national law by 22 January 2029. It is therefore expected that Book XX of the Code of Economic Law will be amended again in the coming years.

23. Is your jurisdiction debtor or creditor friendly and was it always the case?

Belgian insolvency law has not stood still over the past decades. The insolvency framework as we know it today in Belgium finds its roots in the major reforms of 1997, which gave rise to the then Bankruptcy Act (Faillissementswet) and the then Judicial Agreement Act (Wet Gerechtelijk Akkoord). These reforms brought about a genuine paradigm shift. Influenced in part by American legal thinking, insolvency law became more humane and debtor friendly. For natural persons, this meant that lifelong subjection to excessive indebtedness gave way to the possibility of debt discharge – a so-called ‘fresh start’. At the same time, the focus within insolvency law gradually shifted from liquidation procedures towards restructuring procedures.

The faltering beginnings under the Judicial Agreement Act were successfully revived in 2009 by the Act on the Continuity of Enterprises (Wet Continuïteit Ondernemingen), as amended in certain respects by the 2013 corrective act (reparatiewet), and which gradually expanded in scope. This, however, led to inconsistencies with the Bankruptcy Act that the legislator sought to eliminate in 2017 by consolidating both procedures into a single code – Book XX of the Code of Economic Law (Wetboek van Economisch Recht) – with a harmonised scope of application.

Although certain anti-abuse provisions were introduced by the 2013 corrective act, access to restructuring procedures remained deliberately low-threshold and thus very debtor-friendly. The conditions imposed on the debtor to qualify for restructuring – whether through an amicable or collective agreement, or via a transfer – were minimal. The debtor benefited from a suspension of payments and retained full control over the management of the business during the reorganisation.

The transposition of the European Restructuring Directive marked a new turning point in Belgian insolvency law

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with respect to restructurings. Through this transposition, Belgium has taken steps towards a more balanced regime between debtor and creditors:

- The introduction of creditor classification and class-based voting has given creditors greater influence. Voting is no longer dominated solely by secured creditors such as the debtor's banks.
- The cross-class cram-down mechanism grants the debtor a powerful tool, but only on condition that at least one class of creditors supports the plan.
- More weight is given to statutory and contractual ranking in insolvency proceedings. Whereas under the previous regime subordinated shareholders would routinely retain their equity position while unsecured creditors faced losses, this is no longer self-evident under the current rules.

Despite the increased attention to creditor rights, reforms have also introduced new tools for the debtor. These include the possibility of preparing bankruptcy privately while retaining control of the business, the automatic discharge of residual debts in the bankruptcy of natural persons, and the relaxation of out-of-court restructuring options (e.g. the removal of formalities for the out-of-court amicable agreement).

Belgium remains relatively debtor-friendly compared to more creditor-focused jurisdictions such as Germany or the Netherlands. However, the recent reforms have made the system more transparent, strengthened the legal position of creditors, and better aligned it with the demands of complex restructuring practice.

The balance is therefore gradually shifting towards a neutral or more balanced approach, in which the protection of viable businesses and the provision of a fresh start remain central, but with greater regard for the structural rights of 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)?

Socio-political factors, particularly the preservation of employment, are playing an increasingly important role in both restructuring and liquidation procedures in Belgium.

Where the transfer of a business occurs as part of a transfer under judicial authority or within the private preparation of bankruptcy, it is required that employment be preserved to the greatest extent possible.

In the context of the reorganisation plan under the judicial reorganisation procedure, a prohibition is imposed on reducing employee compensation.

Additionally, various procedures include information obligations towards employees (or their representatives) regarding the opening of the procedure or concerning a (proposed) transfer of activities. This is governed by collective labour agreements, which also establish rules regarding the retention of certain rights of employees.

In the event of collective dismissal or closure, social dialogue is in any case mandatory, pursuant to the so-called 'Renault Wet'.

The State may intervene in various ways in situations of financial distress. For example, the Closure Fund (Fonds voor Sluiting van Ondernemingen or FSO) guarantees payment of outstanding wages and compensation to employees in the event of bankruptcy.

In addition, public investment vehicles such as the Federal Holding and Investment Company (Federale Participatie- en Investeringsmaatschappij or FPIM) and Flanders Investment Company (Participatiemaatschappij Vlaanderen or PMV) may temporarily provide refinancing or guarantees for strategic companies.

During recent crises, the Belgian State has also provided deferral schemes, temporary moratoria, and bridge financing.

The State does not intervene systematically but is willing to do so in the case of large enterprises, strategic sectors, or national crises.

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?

Although restructuring procedures are becoming more established, there remains a persistent distrust of restructuring within the Belgian business community. A judicial reorganisation by collective agreement is often perceived as a prelude to bankruptcy, which leads debtors to resort to a restructuring procedure too late or, when one is initiated, causes creditors and suppliers to

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withdraw their support prematurely. This distrust is reinforced by the continuing public stigma attached to restructuring, particularly in the case of smaller enterprises.

Besides, the restructuring and liquidation procedures currently available in Belgium since the transposition of the Restructuring Directive form a complex web of options, with procedures pursuing the same objectives coexisting (e.g. transfer under judicial authority and the private preparation of bankruptcy), even though some are clearly more creditor-friendly than others. This raises the question whether it might have been preferable to adopt a more limited framework with a single balanced procedure.

Moreover, there is as yet insufficient coordination between Belgian insolvency law and Belgian company law. Shareholders are increasingly side-lined in restructuring procedures, while simultaneously experiencing a greater impact on their rights. As things stand, it is unclear how this tension should be reconciled. For example, a reorganisation plan may be filed without shareholder approval, even though some measures included in the plan (such as a debt-to-equity swap) may require shareholder consent. At present, it remains uncertain how these issues are to be harmonised.

Finally, the possibilities for group restructurings are limited or, at the very least, lack a proper legal framework. Due to the absence of statutory rules for group procedures, both cross-border and intra-group restructurings often proceed inefficiently. In practice, it is necessary to rely on separate proceedings for each company, which, however, is economically unrealistic.

To date, no specific legislative proposals have been introduced to address the above concerns. Nevertheless, the future implementation of Directive (EU) 2026/799 may provide an opportunity for the Belgian legislator to revisit some of these issues.

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