

Highlights of the new insolvency legislation

The law of 11 August 2017 has significantly changed the insolvency legislation for companies. The bankruptcy law of 8 August 1997 and the law of 31 January 2009 on the continuity of companies (the previous judicial agreement) entered into book XX of the Economic Law Code. Important novelty is its broader scope. All companies and free professions qualify for the insolvency procedures.

Broader scope

Currently the free professions cannot go bankrupt. As is the case for all entrepreneurs, they can obtain the possibility to modify, protect or stop their business. Concrete measures for the free professions are to be determined by the King.

The scope of the legislation is from now built around the concept of 'company'. For the application of book XX a 'company' is:

- every person independently performing a professional activity;
- every legal person;
- every organization without legal personality.

Everyone belonging to one of the above categories (person or organization) can go bankrupt or be the subject of a legal reorganization. So not only merchants, but also free professions, agricultural enterprises, not-for-profit organizations and all persons with an independent professional activity can in the future go bankrupt.

Full electronic insolvency procedure

In the Central Solvency Register (an electronic database), all files concerning amicable agreements, legal reorganization procedures or bankruptcies are filed and archived. To file for bankruptcy, one should no longer pass by the registry of the commercial court. The courts, registrars, commercial judges and curators can electronically consult the file.

Renewal of the amicable agreement

Through the amicable agreement, the creditor is certain he can keep the payments he receives. When this agreement can be executed, the creditor can enforce it before court in case the debtor does not act. The debtor who is not able to arrange things himself, can invoke a negotiator. Such negotiator can help to draft an agreement with the creditors. Thanks to these measures a company facing difficulties can react faster and restart at a very low price.

Start on 1 May 2018

The law of 11 August 2017 enters into force on 1 May 2018 and applies to insolvency procedures starting as from that day. The King can determine an application date for each provision of the 11 August 2017 prior to 1 May 2018.