

Covid-19 | Royal Decree on temporary protection measures for enterprises adversely affected by the Covid-19 crisis

1. PURPOSE OF THE DECREE

In response to the lockdown measures which had to be taken due to the Covid-19 crisis, the Belgian Federal Government has adopted, on 24 April 2020, a **Royal Decree concerning the temporary suspension, for the benefit of enterprises, of enforcement measures and other measures during the Covid-19 crisis** (the *Decree*).

The Decree provides a moratorium for certain debts and enforcement measures as it is expected that the temporary protection against creditors offered by the various judicial reorganisation procedures may not be suited to the exceptional nature of the current crisis. Indeed, a judicial reorganisation procedure still involves important costs for the company-debtor, only provides a solution, depending on the procedure, for debts dating from before the start of the procedure, and would overload the courts.

2. SCOPE OF THE DECREE

The Decree applies to all enterprises:

- (i) that fall under the scope of book XX of the Code of Economic Law on insolvency (**basically all Belgian enterprises** bar credit institutions, insurance companies, certain funds...);
- (ii) whose **continuity is threatened due to the Covid-19 crisis** and related consequences, for instance, where (i) the turnover of the enterprise is significantly affected due to the crisis, (ii) the enterprise resorts to temporary unemployment, and/or (iii) the enterprise is subject to a temporary forced closure following governmental decisions; and
- (iii) that **were not already facing a persistent cessation of payments** on 18 March 2020.

3. TEMPORARY AUTOMATIC MORATORIUM

In summary, the Decree grants an **automatic moratorium** period applying from **24 April 2020 until and including 17 May 2020** (subject to prolongation) that includes the following protection measures.

3.1 Protection against bankruptcy, judicial dissolution and transfer under judicial authority

The protected enterprise **cannot be declared bankrupt at the initiative of its creditors**. Further, the Decree **suspends an enterprise's obligation to file for bankruptcy**. Also the judicial dissolution and transfer of (part of) the activities of an enterprise that meets the bankruptcy criteria have been suspended.

However, (i) a voluntary insolvency filing remains possible and (ii) an enterprise can still be declared bankrupt at the initiative of the public prosecutor or a provisional administrator appointed pursuant to section XX.32 of the Code of Economic Law.

3.2 Protection against attachments and enforcement measures

No conservatory or executory attachment can be levied, and **no means of execution** can be taken or continued on the assets located in Belgium to recover debts. Certain exceptions apply, such as for conservatory or executory attachments on immovable property or vessels. Consequently, a creditor having a mortgage will be able to foreclose its mortgage.

The protection covers **both pre-existing debts as well as debts incurred after the implementation of the Decree**. The date on which the debt arises or falls due is of no importance.

3.3 Protection against the termination of existing agreements due to non-payment

Creditors cannot, unilaterally or by judicial decision, terminate pre-existing agreements in case of payment default. An exception is made for employment agreements.

The payment terms included in a reorganisation plan, approved before or after 24 April 2020, are automatically extended for a term equal to the duration of the temporary protection granted by the Decree.

3.4 Protection for the new credits and securities

New credit lines granted between 24 April 2020 and 17 May 2020 and security granted in execution of such new credit lines also benefit from a (limited) protection in case of bankruptcy. For such credit lines and security interests, the typical bankruptcy claw back rules will not apply, pursuant to which certain actions performed during the suspect period (typically six months before the bankruptcy) may be declared non-enforceable in case of bankruptcy.

The Decree also provides that for such credit lines, **lenders cannot be held liable** solely on the grounds that the new credit lines did not actually enable all or part of the debtor's assets or activities to be maintained.

4. LIMITS OF PROTECTION

4.1 Late payment interest and ordinary contractual sanctions are still applicable

The Decree and its protection will not affect:

- (i) the general obligation of enterprises to pay debts that are due and payable, given that **late payment interest will continue to accrue and become payable, and termination rights will revive** at the end of the moratorium period; and
- (i) the right of a creditor **to invoke ordinary contractual penalties**, such as the exception of non-performance, the set-off of debts, the right of retention or the execution of a financial collateral.

4.2 Possibility for the President of the Enterprise Court to lift protection

It is not up to the individual creditor to determine whether a company-debtor falls under the scope of the Decree. However, **the President of the enterprises court can lift the temporary protection at any time** for enterprises that do not fall under the personal scope of the Decree or that misuse the temporary protection, e.g. in case of abuse of rights.