

DEBT COLLECTION AND INSOLVENCY
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I. DEBT COLLECTION

Ordinary Proceedings

- Proceedings initiated by a writ of summons, served by a bailiff.
- The writ of summons shall indicate the identity of the parties, the claim, and the date of the first hearing (at least 8 days from the date of notification, but period extended if the defendant is resident abroad),
- Language.

I. DEBT COLLECTION

Ordinary Proceedings

- Exchange of written briefs.
- Average length of proceedings in commercial matters: between 9 and 16 months.
- Small claim cases can be resolved during the first hearing (in particular, the recovery of undisputed credits).

I. DEBT COLLECTION

Ordinary Proceedings

- Average length of proceedings in appeal: between 2-3 years.
- Average length of proceedings before the Supreme Court : 1 year (only on the ground of error of law).

I. DEBT COLLECTION

Legal Costs

- Courts are accessible at low cost.
- The losing party shall reimburse (i) court costs (bailiff), (ii) lawyers' fees, on a flat-rate basis (maximum amount € 36,000).

I. DEBT COLLECTION

Foreign judicial decisions

- Foreign judicial decisions by courts in other member states are recognized and can be enforced quickly (Regl. EC 44/2001).
- Other foreign decisions enforceable through a special “exequatur” procedure.

I. DEBT COLLECTION

Arbitration

- (International) arbitration permissible under Belgian law.
- Unless agreed by the parties, an arbitral award cannot be appealed.
- Belgium is a party to the New York Convention of June 10, 1958, regarding recognition and enforcement of awards of arbitration.

I. DEBT COLLECTION

Choice of law and jurisdiction clauses

- Belgian law allows parties to choose the law applicable to their contract.
- Possible for a Belgian judge to apply foreign law.

I. DEBT COLLECTION

Interim remedies to secure the execution of a claim

- Interim remedies during the trial and seizures.
- Requirements :
 - measure provisional: seizures cannot last for more than 3 years (renewable);
 - *fumus boni iuris*;
 - *danger in the delay*.
- Interim measures are provisionally enforceable and the judge may order the losing party to pay a fine.
- Appeal shall not suspend the enforcement of the order.

II. INSOLVENCY PROCEEDINGS - GENERAL

Purpose

In Belgium, three types of insolvency proceedings :

- judicial reorganization,
- bankruptcy,
- (deficit) dissolution and liquidation procedure .

II. INSOLVENCY PROCEEDINGS - GENERAL

Detection of merchants in financial distress

- Commercial investigation offices within the commercial courts collect and examine economic data evidencing that businesses are facing financial difficulties.
- The investigating judge requests the merchant to appear in order to gain information.
- The investing judge may forward the case to the district attorney if the conditions for bankruptcy are met.

III. REORGANIZATION

Extra-judicial instruments

- Various (extra-)judicial instruments :
 - appointment of a company mediator to facilitate reorganization;
 - appointment of a court administrator if gross, unmistakable shortcomings;
 - negotiate an extra-judicial settlement agreement without intervention by the court.

III. REORGANIZATION

Judicial reorganization

- The court will order a judicial reorganization.
- Judicial instruments to secure all or part of the business as a going concern :
 - Negotiation, under judicial supervision, of an agreement with at least two creditors.
 - Reorganization scheme to be approved by a majority of 50% of the creditors. If approved, the plan (i) is binding on all creditors, (ii) may involve reduction and/or postponement of the claim not creditors (the plan may not exceed five years).

III. REORGANIZATION

Judicial reorganization

- Transfer under judicial authority of all or part of the business (the owners and managers can be involved in the NewCo acquiring the business).
- During judicial reorganization procedure, merchant remains in possession of his assets and in charge of the business.
- Costs € 1,000.

III. REORGANIZATION

Conditions for the opening of a judicial reorganization procedure – implications of the petition

- If the continuity of the business is or will be threatened (even if virtually bankrupt).
- Protection from the creditors :
 - no movable or immovable assets can be sold on the demands of the creditors;
 - merchant cannot be declared bankrupt;
 - merchant cannot be judicially liquidated.

IV. BANKRUPTCY

Conditions

- A merchant is bankrupt if:
 - he has persistently ceased making payments,
 - his credit is exhausted,
- If the conditions for bankruptcy are met, a merchant can still choose to request a judicial reorganization.

IV. BANKRUPTCY

Procedure

- Can be initiated either by the merchant or the public prosecutor and any creditor.
- Merchant must file for bankruptcy within one month of the conditions being met. Failure within this time limit can result in the merchant being liable for the increase in his debts.

IV. BANKRUPTCY

Consequences of a bankruptcy order

- Divests the bankrupt of his capacity to administer his property.
- The court appoints trustee to administer and liquidate the bankrupt's estate.
- Trustee (i) must handle transactions to preserve the bankrupt's rights against his debtors, (ii) draws up inventory of all assets, (iii) may settle all disputes with creditors, (iv) liquidates the estate by selling the assets and paying the debts.
- The proceeds of sale are distributed among the creditors.

IV. BANKRUPTCY

Creditor's claims – classes of creditors

- From the date of the bankruptcy order, claims of the individual creditors are stayed.
- Creditors must file their claims with the clerk of the commercial court.
- Two classes of creditors:
 - those secured by specific property;
 - those with unsecured claims or a general security.

IV. BANKRUPTCY

Void acts after the date of bankruptcy – suspect period

- If the circumstances clearly demonstrate that the merchant ceased his payments before the bankruptcy order, the court will fix that date, which cannot be earlier than six months, as start of the period known as the “suspect period”, (claw-back action).

IV. BANKRUPTCY

Void acts after the date of bankruptcy – suspect period

- Legal acts performed during the suspect period cannot be opposed if :
 - gratuitous acts or non-gratuitous acts where the obligations significantly exceed those of the other party;
 - acts intended to pay off still-owed monetary debts;
 - pledges, and mortgage for pre-existing debts;
 - acts of disposition of the debtor, if the counterparty knew of the insolvency of the debtor at the moment when the act was performed.

Thank you for your attention

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