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Preserving undertaking's business continuity is one of the main purposes of the Belgian insolvency law. However, in some cases, the undertaking's situation is so serious that there is no better option than its liquidation. Liquidation proceedings aim to winding up the debtor's estate and distributing the proceeds among its creditors to pay off its debts.

As a preliminary remark, it is to be noted that liquidation proceedings are not necessarily incompatible with the safeguard of the undertaking's business. In fact, the transfer of the undertaking's business may be envisaged in the context of a liquidation procedure. Moreover, the law of 7 June 2023 includes two innovations bringing liquidation proceedings and proceedings aiming at safeguarding the business closer together:

- **(NEW)** Firstly, it expressly defines the transfer under judicial authority¹ as a liquidation procedure, to be in line with the Plessers and Heiploeg case-law of the ECJ (see our previous newsletter "*Back to the future with the Heiploeg ruling?*" [\[here\]](#)).
- **(NEW)** Secondly, it introduces the new "private preparation for bankruptcy" procedure (the Belgian "prepack").

In this fourth episode, we will examine the three types of liquidation proceedings under Belgian law, from both the debtor's and creditors' points of view.

TRANSFER UNDER COURT AUTHORITY

The transfer under court authority entails the **sale of all or part of the debtor's assets and business**. In this procedure, a liquidation practitioner is necessarily appointed by the court to organise and carry out the sale on the debtor's behalf, who nonetheless remains in charge of the business.

Accordingly, the practitioner collects and selects bids from potential purchasers, with due regard to the creditors' rights. Bids may only be considered provided that the offered price is at least equal to the enforced liquidation value of the assets to be transferred in the event of bankruptcy or liquidation.

Although this procedure is no longer a judicial reorganisation procedure ("**JRP**")², it remains subject to several JRP rules (marked* in the table below). Additional details regarding JRP may be found in the third episode of this series [\[here\]](#).

1. Previously defined as a judicial reorganisation procedure ("JRP").

2. Which, as a reminder, aims at safeguarding the continuity of the undertaking.

INSOLVENCY SERIES

LIQUIDATION PROCEEDINGS



	Debtor's point of view	Creditor's point of view
Initiation of the proceedings	The debtor may request for its business to be transferred under court authority if the undertaking's continuity is threatened in the short or medium term*.	Creditors may also petition for such a transfer of the undertaking's business under court authority.
Statutory stay	From the opening of the proceedings, the debtor enjoys a stay of enforcement measures for a period determined by the court*.	Creditors must abide by the stay of enforcement measures*.
Debtor remains in charge	The debtor remains in charge of the management of its business*.	Creditors may request the appointment of a provisional administrator *.
Ongoing contracts	Ongoing contracts are not terminated by virtue of the opening of the proceedings*.	Creditors may only terminate a contract based on a contractual breach that occurred prior to the opening of the transfer proceedings *.
	Under certain conditions, the debtor may unilaterally suspend performance of its obligations during the stay*.	If the debtor has suspended performance of its obligations, creditors may only claim damages for the harm suffered*.
	The prospective buyer may choose: i. which contracts it does or does not intend to take over ; ii. subject to the court's supervision, which employees will be taken over . The purchaser's choice must however be justified by technical, economic or organisational motives.	
Payment of claims		To take part in the distribution of the purchase price (see below), creditors must file a declaration of claim with the online insolvency register (the "REGSOL").
Termination	The debtor may waive all or part of its petition *.	Creditors may request early termination of the proceedings in certain cases*.
<i>* Similar to JRPs (see episode 3 [here])</i>		

The bid(s) selected by the liquidation practitioner will be **submitted to court**. The court will authorise the sale if all the conditions are met, in particular in terms of minimum price and choice/number of employees taken over. The **purchase price will be distributed** among the undertaking's creditors, with due regard to the creditors' preferential rights.

BANKRUPTCY

The debtor is in a **situation of bankruptcy** if two conditions are met: he is in a **persistent default of payment** and his **credit is undermined**.

The purpose of the bankruptcy is for the court-appointed bankruptcy trustee to **liquidate the undertaking's estate** and to **distribute the proceeds** among the creditors.



	Debtor's point of view	Creditor's point of view
Initiation of the proceedings	The debtor is required to file for bankruptcy within one month of the fulfilment of the conditions of bankruptcy.	Creditors may also petition for a debtor's bankruptcy.
Debtor's divestiture	As from the date of the bankruptcy judgment, the debtor is automatically divested of the management of its business in favour of the bankruptcy trustee.	No individual enforcement measures may be initiated, except for certain debts (" <i>dettes de la masse</i> " / " <i>boedelschulden</i> ")
	The bankrupt debtor may no longer make or personally receive any payment nor conduct any transaction.	Payments and transactions made by the bankrupt, and all payments made directly to the debtor as from the bankruptcy judgment are unenforceable against the body of creditors.
Creditors' protection		Transactions carried out prior to the opening of bankruptcy proceedings (up to maximum 6 months) may, under certain conditions, be declared unenforceable against the body of creditors (the "suspect period").
		Creditors may still, after the opening of the bankruptcy proceedings: <ul style="list-style-type: none"> • Invoke set-off of their own debt towards the debtor, under certain conditions; • Claim for the restitution of their belongings.
Freezing of the under-taking's liabilities	As from the date of the bankruptcy judgment: <ul style="list-style-type: none"> • The debtor's debts become due. • Creditors' claims are stayed (interest is suspended, except for certain secured claims). 	In principle, attachments filed prior the bankruptcy judgment are suspended.
Ongoing contracts	The opening of the bankruptcy proceedings does not automatically terminate ongoing contracts.	
	The trustee may decide whether or not to pursue ongoing contracts.	Co-contractors may summon the trustee to take such a decision.
Payment of claims	The debtor is powerless; the trustee is in charge of paying off its debts with the proceeds of the liquidation of its estate.	To take part in the distribution, creditors must file a declaration of claim with the online insolvency register (the "REGSOL").

Since 1 September 2023³, Belgian law provides for the private preparation to bankruptcy proceedings (the Belgian "pre-pack"). In a nutshell, such proceedings aim at allowing the debtor to confidentially arrange the transfer of all or part of its assets and activities prior to the bankruptcy declaration.

3. Date of entry into force of the law of 7 June 2023.



The court may grant such petition if:

- The debtor is in a situation of bankruptcy, and
- It would **facilitate the undertaking's liquidation**, maximise the creditors' payments and preserve employment.

The court appoints a liquidation practitioner to organise such a transfer in the creditors' best interests. The **entire preparatory proceedings** are **confidential**.

JUDICIAL DISSOLUTION AND LIQUIDATION

Dissolution involves **terminating the existence of a legal entity**. It is followed by **liquidation**, which consists of **winding up the entity's assets to pay off its creditors**.

Dissolution may be decided by the debtor itself⁴. It may also be ordered by the court (judicial dissolution)⁵, which will appoint a **liquidator** to carry out the liquidation.

Judicial dissolution may be an **alternative to bankruptcy** under certain circumstances. It is less onerous and presents a lower reputational risk for the debtor.

	Debtor's point of view	Creditor's point of view
Initiation of the proceedings (judicial dissolution)	<p>Creditors may petition for the undertaking's dissolution in specific cases (namely if its annual accounts are not filed or its own funds are below a certain threshold).</p> <p>(NEW) When the requirements for bankruptcy are met, the court may, either at its own initiative or upon a creditor's request, open a judicial dissolution rather than bankruptcy proceedings.</p>	
Debtor's divestiture	<p>As from the liquidator's appointment, the debtor is divested of its management of its business, and the liquidator has sole authority to carry out all acts on behalf of the undertaking.</p>	<p>The creditors' individual right of action is preserved, if it does not harm the rights of the other creditors.</p> <p>Creditors with a special lien, mortgage or security interest will be able – with no condition – to take enforcement action on the assets covered by their security.</p>
Freezing of the undertaking's liabilities	<p>As from the date of opening of the judicial dissolution:</p> <ul style="list-style-type: none"> • The debtor's debts become due. • Creditors' claims are stayed (interest is suspended, except for certain secured claims). 	
Ongoing contracts	<p>Judicial dissolution does not terminate ongoing contracts: the liquidator may decide whether or not to continue the contracts.</p>	
Payment of claims		<p>There are no legal provisions governing the declaration and verification of claims: creditors may file claims until the closure of the liquidation.</p>

4. By decision of the shareholders' meeting, which will appoint a liquidator.

5. We will only discuss the judicial liquidation in this episode.



STAY TUNED

Insolvency is and remains a hot topic, particularly during the economically troubled times we are going through.

You want to learn more about insolvency issues, whether you are an undertaking currently facing financial difficulties, or a creditor wishing to protect itself against the risk of insolvency of its debtors, or to know more about the impact of such insolvency, stay tuned for the next episodes of this “fascinating” insolvency series.

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This article is not a legal advice or opinion. You should seek advice from a legal counsel of your choice before acting upon any of the information in this article.



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