

Royal Decree number 15: Covid-19 crisis and suspension of execution



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On the 24 April 2020, the Royal Decree number 15, regarding the temporary suspension in favour of undertakings of executive measures and other measures during the Covid-19 crisis, was published in the Belgian Gazette and came into force.

The general purpose of the Decree is to automatically grant a general suspension to companies that have been affected by the coronavirus crisis, by protecting these companies from seizures, dissolution or bankruptcy as from the 24 April until the 17 May – the Suspension Period – which can be prolonged.

The measures taken are similar to the protection companies would enjoy under the procedure of judicial reorganisation, being a temporary suspension of all executive measures undertaken by creditors and even a prohibition to terminate agreements following non-payment.

The scope of the Decree is broad and covers all companies falling under Book XX of the Code on Economic Law whose continuity is threatened by the coronavirus crisis. There are no additional conditions: if a company is affected in a negative way by the coronavirus crisis, the Decree applies. There is one exception: companies that suspended payments before 18 March 2020 are excluded from the scope of the Decree. The aim is to exclusively protect companies that were healthy before the start of the crisis.

Suspension of executive measures

Pending the Suspension Period, companies are protected against (executive or conservatory) seizures or any other executive measures aimed at the assets of the debtor, and connected to all debts of the company. The origin of the debt or its due date are irrelevant, which makes the effect of the Decree broader than the suspension following a judicial reorganisation.

However, executive measures on immovable property, sea ships and inland vessels are an

exception and remain possible

Furthermore, companies are protected from involuntary bankruptcy. During the Suspension Period, no creditor can file for the bankruptcy of its debtor. The same applies for judicial dissolution and transfer under the judicial authority of the company's activities (Art. 84 §2, 1° CEL).

Bankruptcy or judicial dissolution proceedings initiated by the public prosecutor, a provisional administrator or by the debtor itself remain possible. However, if the fulfilment of the bankruptcy conditions is due to the coronavirus crisis, the obligation to declare bankruptcy within one month is suspended. Companies can nonetheless decide to declare for bankruptcy if they chose to do so.

Article 1 of the Decree prescribes that agreements concluded before 24 April 2020 cannot be (unilaterally or judicially) terminated due to the non-payment of a debt. This measure does not apply to labour contracts. Contractual remedies connected to other (non-monetary) breaches remain possible.

This does not mean that companies are exempted from paying their invoices: debts that are due still have to be paid. At the end of the suspension period, creditors regain their rights, including the right to terminate contracts for monetary breaches.

Exceptions

A procedure can be initiated in order to have the president of the commercial court decide that a certain undertaking is exempted from the scope of the Decree and the suspension can then be lifted (in whole or in part). The president of the commercial court will assess the interests of the debtor (decrease in revenue or activities, compulsory closure of the business or the application of economic unemployment), as well as the interests of the creditor.

Protection of credit

Any credit or loans provided to a company pending the Suspension Period are protected against a possible subsequent bankruptcy. Any actions or securities taken to provide such a credit are also protected. This entails that certain actions in connection to new credit or loans (also from suppliers) undertaken in the so-called suspected period before a bankruptcy, cannot be declared non-enforceable within the frame of a bankruptcy proceeding.

Credit or loans provided relating to old debts do not fall under this provision.

Practical implications

When dealing with debtors, companies should be aware of the Decree and its consequences pending the Suspension Period. However, it should be emphasized in communications with

debtors that (i) there is no waiver of claim, (ii) debtors remain obligated to pay any outstanding debts that are due and (iii) at the of the Suspension Period, all rights and remedies will be resumed.

Companies have to refrain from filing for the bankruptcy of their debtor, but the solvency situation should be monitored closely, especially in terms of immovable assets as these are exempt from the application of the Decree.

When issuing new credit to a debtor, reference should be made to the Decree so that the actions taken in that regard are protected in case of a subsequent bankruptcy. The Decree is intended to provide some breathing room to debtors and to procure a “cease fire” between undertakings in the short term. However, because these suspensions are only in effect for a few weeks, debtors will still need to find long-term solutions to the financial impact on their business. Several government schemes—many of which can be found on Osborne Clarke’s dedicated [page](#)—aim to provide direct and indirect support to businesses of all sizes.