



## New rules for corporate insolvency

As of September 1, 2023, a significant reform in insolvency law has come into effect, marking a major turning point in our legal landscape. This reform has **three main objectives** and introduces a key procedural innovation: **the classification of creditors into different classes**

### Key Points of the Reform

#### Prevention

The reform strengthens the **prevention** of businesses in difficulty by offering a wider range of preventive tools. It also grants increased powers to the **Chambre des Entreprises en Difficulté**, a subdivision of the Enterprise Court responsible for preventive insolvency measures.

#### Offering a Second Chance (« Fresh Start »)

**Automatic debt discharge** for individuals declared bankrupt is now implemented unless opposed. The judgment closing the bankruptcy and the discharge of debt will now be issued in the same hearing, allowing individuals to restart their activities without fear of income seizure.

#### Improving Procedural Efficiency<sup>1</sup>

To expedite proceedings, new measures have been introduced and existing deadlines have been shortened. Among the innovations is the emergence of **confidential procedures**, helping to avoid negative publicity surrounding the company's financial situation. This reform is expected to lead to an increased use of insolvency procedures.

### Classification into Classes of Creditors

One of the major innovations of the reform is the "**classification into classes of creditors**." This approach aims to facilitate the adoption of agreements between struggling entrepreneurs and creditors by grouping creditors with **similar interests**. While this system simplifies certain negotiations, it has been criticized for adding complexity.

#### Practical Example:

##### A Bakery in Difficulty

To illustrate these new rules, consider a bakery operating as a "société à responsabilité limitée" (SRL) that has been active for over 10 years and located in Brussels.

Facing financial difficulties due to various crises in the country, the bakery has accumulated debts amounting to 100.000,00 EUR distributed as follows:

- National Social Security Office (NSSO): **25.000,00 EUR**, representing 25% of the total debt.
- Corporate Tax (CT) : **15.000,00 EUR**, representing 15% of the total debt.
- Value Added Tax (TVA) : **15.000,00 EUR**, representing 15% of the total debt.
- Suppliers of raw materials (flour, yeast, salt, etc.) : **30.000,00 EUR**, representing 30% of the total debt.
- Personnel (employees) : **15.000,00 EUR**, representing 15% of the total debt.

<sup>1</sup>The silent bankruptcy (pre-pack), for example, involves preparing for bankruptcy before it officially begins by appointing legal practitioners to assist the company with its procedures.

## Case 1 : Submission of a Plan **without** the new Classification (Voting by Individual Creditors)

Creditors	Percentage of Total Debt	Vote
NSSO	25%	Non
CT	15%	Non
VAT	15%	Non
Suppliers	30%	Oui
Personnel	15%	Oui
Result of votes		Non

If each creditor votes independently, the plan can only be approved if the majority of creditors, representing at least half of the total debt amount (50.000,00 EUR), vote in its favor. In this example, the plan would not be approved because three creditors, representing 55% of the total debt, oppose it.

## Case 2 : Submission of a Plan with the New Classification by “Classes of Creditors”<sup>2</sup>

Classes of Creditors	Vote	
1st class : Institutional Creditors (NSSO, CT, VAT)	Non	
2nd class : Suppliers	Yes	
3rd class : Employees	Yes	
Result of votes		Yes

In this new system, the approval of the plan is no longer conditioned by a double majority, and creditors can be grouped according to similar interests.

By dividing creditors into classes based on their interests (such as **institutional creditors, suppliers, employees**), **the approval of the plan is facilitated**. As a result, the plan can be approved even if one class opposes it, provided that two classes accept it.

This reform of creditor class distribution, as provided by the new law is **mandatory for large companies**<sup>3</sup>.

SMEs can also access this system, provided they **explicitly** request it when filing their petition<sup>4</sup>.

However, the complexity of this procedure may still discourage many SMEs from applying, creating a de facto distinction between large companies and SMEs in the application of the new law.

<sup>2</sup>This distribution is exaggerated for the sake of this example.

<sup>3</sup>Large companies are defined as companies, associations, or foundations that exceed one or more of the following criteria for two consecutive accounting periods :

- Average annual number of employees : 250 ;
- Annual turnover excluding VAT : 40.000.000 EUR ;
- Total balance sheet : 20.000.000,00 EUR.

<sup>4</sup>CDE, art. XX.83/1, paragraph 3. This request for access to the "large company regime" can only be made at that time.

<sup>5</sup>In the absence of opposition to the discharge submitted by a creditor, the Public Prosecutor, or the trustee.

## Conclusion

This reform represents **a significant advancement in insolvency law**. It aims to effectively prevent economic difficulties for entrepreneurs by strengthening the available preventive tools.

By offering **a second chance** to individuals declared bankrupt with **automatic debt discharge**<sup>5</sup> and **protection of post-bankruptcy income**, this reform addresses contemporary needs for flexibility and economic recovery.

The improvement of procedures, particularly through the introduction of faster and more confidential mechanisms, as well as creditor class distribution, allows for a **more equitable and efficient** management of insolvency situations.

However, the complexity of these new rules could limit their accessibility for SMEs, potentially creating **a disparity** between large enterprises and smaller entities.

We believe this reform provides solutions better suited to **contemporary economic realities** while balancing creditor protection and support for struggling entrepreneurs.

Seeking assistance from a specialized practitioner remains highly recommended to navigate this new legal framework.



Please do not hesitate to contact us if you have any questions, particularly regarding the new procedures.

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