

Question	Answer	Comments
<i>Which businesses can benefit from the Moratorium?</i>	Only businesses that were compelled to close by Ministerial Decree of 28 November 2020 (as modified by Ministerial Decree of 1 November 2020) and whose continuity is threatened by the COVID-19 outbreak and its consequences and which were not already virtually bankrupt on 18 March 2020 can benefit from the Moratorium.	<p>The purpose of the Moratorium is to protect viable businesses. Businesses whose continuity was severely compromised before the COVID-19 outbreak are not eligible for the Moratorium. These businesses may however apply for judicial reorganization proceedings.</p> <p>Moreover, the new Moratorium is not generally applicable to any business, but only to those businesses that were compelled to close pursuant to Ministerial Decree of 28 November 2020 (as modified by Ministerial Decree of 1 November 2020). This last condition constitutes an important limitation compared to the first Moratorium.</p> <p>The Moratorium only protects the debtor, not related third parties (e.g. spouses or guarantors), unless they are themselves eligible businesses.</p>
<i>How long will the Moratorium last?</i>	The new Moratorium will apply from 24 December 2020 until 31 January 2021. The government may decide to extend this period in view of the duration of the measures adopted to address the COVID-19 pandemic.	The Moratorium does not have retroactive effect and does not affect the validity of attachments levied before its entry into force or bankruptcies adjudicated between 17 May 2020 and 24 December 2020.
<i>Is it possible to apply for exceptions to the Moratorium?</i>	<p>The default rule is that businesses automatically benefit from the Moratorium, provided that they were compelled to close, pursuant to Ministerial Decree of 28 October 2020 (as modified by Ministerial Decree of 1 November 2020). An interested party (e.g. creditor or competitor) may challenge the Moratorium's application if it considers that a business is not eligible for the Moratorium (as it was virtually bankrupt before 18 March 2020 or is not impacted by the COVID-19 pandemic).</p> <p>A party that wishes to challenge the Moratorium's application must summon the debtor before the president of the competent business court.</p> <p>The president can rule that the business does not fall within the scope of application of the Moratorium or can lift the protection of the Moratorium for other reasons, in whole or in part. A creditor may not unilaterally decide that the Moratorium does not apply.</p>	<p>In ruling on a request to lift the Moratorium, the president of the business court will amongst other things consider the following:</p> <ul style="list-style-type: none"> <li>• whether the COVID-19 pandemic has affected the debtor's turnover or activity;</li> <li>• whether the debtor has made use of the temporary unemployment scheme;</li> <li>• whether the debtor was ordered by the government to close its business; the impact of the Moratorium on the petitioner.</li> </ul> <p>It is important to note that when the reason for not applying the Moratorium is that the business was not compelled to close, pursuant to Ministerial Decree of 28 October 2020 (as modified by Ministerial Decree of 1 November 2020), we consider that there is no need to refer to the president of the competent business court. Indeed, the interested party may easily and objectively verify on its own whether or not a certain business is concerned by the measures of the latter Decree and such question does not justify referring to the president.</p>

<p><i>Does the Moratorium protect against bankruptcy and involuntary liquidation?</i></p>	<p>During the Moratorium, businesses cannot be forced into bankruptcy or liquidation. Nor can a transfer of undertaking be forced upon a business. In addition, the obligation for a business to file for bankruptcy is suspended for the duration of the Moratorium if the bankruptcy conditions result from the COVID-19 pandemic and its aftermath.</p>	<p>A business may still voluntarily apply for bankruptcy. Furthermore, the public prosecutor and a provisional administrator may request that a company be declared bankrupt.</p>
<p><i>Does the Moratorium protect against attachments?</i></p>	<p>During the Moratorium, preventive and executory attachments cannot be levied or enforced. This protection against attachment covers the following:</p> <ul style="list-style-type: none"> <li>• debts predating the Moratorium;</li> <li>• debts arising during the Moratorium;</li> <li>• debts covered by existing reorganization plans.</li> </ul>	<p>The Moratorium does not forbid preventive or executory attachments levied against immovable assets. Nor does the Moratorium affect preventive attachments on vessels and boats.</p> <p>The Moratorium does not affect the validity of attachments levied before its entry into force, although a pending attachment cannot be enforced.</p>
<p><i>Does the Moratorium extend payment terms provided for by an existing reorganization plan?</i></p>	<p>Payment terms set out in a reorganization plan approved before or during the Moratorium are extended for the duration of the Moratorium.</p>	
<p><i>Does the Moratorium protect against the termination of contracts?</i></p>	<p>Contracts concluded before the entry into force of the Moratorium cannot be terminated due to payment default. This does not apply to employment contracts.</p>	
<p><i>How does the Moratorium affect due debts?</i></p>	<p>The Moratorium is without prejudice to the principle that due debts should be paid. Businesses are encouraged to pay their debts in order to facilitate cash flow.</p>	<p>The president of the business court may take into consideration the debtor's capacity to pay when ruling on a request to lift the Moratorium.</p>
<p><i>Does the Moratorium protect against general contractual remedies?</i></p>	<p>No. The Moratorium does not affect contractual remedies other than the above-mentioned termination. Thus remedies such as the defence of non-performance, set-off, and retention rights remain available throughout the Moratorium.</p>	

*What is the impact of the Moratorium on new credit?*

New credit granted during the Moratorium benefits from limited protection in the event of a subsequent bankruptcy.

Credit providers cannot be held liable on the sole basis that the new credit did not preserve the continuity of all or part of the debtor's assets or activities.

*Does the Moratorium affect application of the Financial Collateral Act of 15 December 2004?*

The Financial Collateral Act of 15 December 2004 remains applicable.