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## Details of new Dutch restructuring scheme published and submitted to Parliament

**The Netherlands' long-awaited initiative for a new restructuring law, featuring elements of the UK Scheme of Arrangements and US Chapter 11 procedure, is now a bill. This is a major milestone which supports business continuity and recovery.**

**A detailed description is provided in the booklet. Further information about the bill, including previous drafts and explanatory memoranda (in English and Dutch), can also be found on our special website [debrauw.com/cerp](http://debrauw.com/cerp).**

Corporate recovery, protection of business continuity and retention of going-concern value are global trends. In many cross-border restructurings, Dutch special purpose vehicles play a role as existing finance or intermediate holding companies. If the state-of-the-art law comes into force, it will allow for global restructurings with the flexibility of the UK's Scheme of Arrangement combined with the moratorium and certainty of the US' Chapter 11, but at a much lower cost and within a short timeframe.

Today, the Dutch government sent Parliament a bill providing for court confirmation of extrajudicial restructuring plans (CERP, or WHOA in Dutch). Under the proposal, a debtor may offer an extrajudicial restructuring plan to all or some of its creditors or shareholders. If certain requirements are met, the restructuring plan can be confirmed by the court, making it binding on all affected parties. The restructuring plan may include a cross-class cram-down and group company obligations (even if the group companies are non-Dutch). It can also terminate onerous contracts. Only rights arising from employment contracts cannot be included in the restructuring plan.

The bill supports the swift creation of a restructuring plan through a debtor-in-possession (DIP) procedure, which includes a court-ordered stay; protection of DIP financing; short statutory periods that apply as of voting day; etc. At the same time, the bill offers deal certainty. A court order - without any possibility of appeal - can be requested on any procedural or substantial matter before a vote is held. Furthermore, an expert pool of judges will issue final decisions, and court confirmation can be refused only on limited grounds.

Another interesting feature for debtors outside the Netherlands, and their creditors, is that CERP will be available in two distinct versions: a public EIR version and an undisclosed non-EIR version. The EIR version is a procedure in the public domain recognised under the

European Insolvency Regulation recast. As such, it benefits from automatic recognition throughout the EU. The other version, which is not in the public domain, may be recognised under the UNCITRAL Model Law; the Recast Brussels Regulation; the Lugano Convention; international treaties or private international law. Debtors with their centre of main interest (COMI) in the Netherlands may select the type of procedure they prefer. Debtors without a COMI in the Netherlands may only use the non-EIR version, provided that the restructuring has a nexus to the Netherlands. Finally, what makes CERP one of the most advanced tools for cross-border group restructurings is that a group of companies may combine the EIR version and the non-EIR version.

For their part, creditors (as well as a works council, employees' representative or shareholders) may initiate a restructuring process themselves, and their interests are protected by a type of absolute priority rule. In addition, the court may order protective provisions, including appointing an observer to monitor the forming of the restructuring plan on behalf of the joint creditors.

Below are the key elements of CERP. More detailed information is included in our booklet and may be found on our special website: [debrauw.com/cerp](http://debrauw.com/cerp).

### **Key elements include:**

- Broad range of jurisdiction: COMI and non-COMI
- Debtor-in-possession (DIP) proceedings with easy access
- Protection of restructuring efforts, including DIP financing
- Power for creditors and shareholders (as well as a works council or employees' representative) to initiate a restructuring plan, in addition to the debtor's power to do so
- Cross-class cram-down
- Absolute priority rule with reasonableness exception
- Option of including equity in the restructuring and setting it aside, and option of issuing new equity, without shareholder consent
- Termination of onerous contracts at the option of the debtor, whereas *ipso facto* clauses are deactivated
- Possibility to strike off parent guarantees or other group company obligations
- Deal certainty: any procedural or substantial matter can be cleared in a court order before the voting process; all CERP-issues are dealt with by an expert pool of judges; decisions cannot be appealed; and court confirmation can be refused only on limited grounds in line with international market practice
- Supporting court measures such as a stay (moratorium); suspension of insolvency proceedings; and interim measures
- Safeguards for creditors' interests
- Quick turnaround and relatively low costs

We would be happy to discuss further how CERP and the restructuring framework in the Netherlands might impact your organisation or any pending matter. For this or any other restructuring question, please reach out to your main contact at De Brauw or to our core group of restructuring experts.

