

Flexible restructuring bill passes important first hurdle in Netherlands

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The lower house of the Dutch parliament has passed a bill providing for court confirmation of extrajudicial restructuring plans bill (CERP). The bill offers an attractive Dutch alternative to the US's Chapter 11 mechanism, and to the English Scheme of Arrangement. De Brauw expects the bill to come into force as early as July 2020, or possibly October 2020. This new legislation will give Dutch companies a game-changing ability to safeguard their business continuity for the benefit of all stakeholders. Timing could not be better, given the challenges faced by so many companies during the Covid-19 pandemic.

Background

The government introduced this bill last summer, based on proposals partially originating from De Brauw partners Ruud Hermans, Reinout Vriesendorp and Klaas de Vries in 2013. Despite a long and thorough drafting process, CERP has received the broad support of insolvency practitioners, courts and academia, banks and other financiers, employers and trade unions alike.

Key features

With the great flexibility it offers in restructurings, CERP is binding on all creditors and shareholders affected. It largely complies with the European Restructuring Directive and allows for public and non-public variations of restructuring proceedings, depending on the debtor's centre of main interests (COMI). It provides for cross-class cram-down, the restructuring of group company obligations through either one or more aligned proceedings, and the termination of onerous contracts with deactivation of *ipso facto* clauses. Supporting court measures and a short timeframe allow for deal certainty and a swift restructuring process.

Last-minute amendments to the bill

In 2019, we published a [booklet](#), highlighting the salient aspects of CERP, and illustrating the changes to come. The final parliamentary phase saw the introduction of the following last-minute substantive amendments. Click [here](#) for the updated version of the booklet.

- to protect small SME-creditors – defined by at least two out of three criteria: (i) 50 or less employees, (ii) assets of less than EUR 6 million, and (iii) net annual turnover of less than EUR 12 million – but only for claims for unpaid supply of goods or services or tort claims. The restructuring plan must essentially offer at least 20% payment on these claims;
- to clearly define the size of the claims of secured creditors. These creditors will then be placed in a separate class of claims to the extent that their claims are covered

by the collateral, and in another separate class for the residual claims. The distinguishing factor is based on the value of the collateral, should there be a bankruptcy; and

- to prevent a holdout position of opposing professional secured creditors as part of an opposing class, in case they cannot opt for cash payment equal to the amount they would receive upon liquidation of the debtor's assets in bankruptcy.

Next steps

The next – and final – step in the legislative process will be deliberations in the upper house of the Dutch Parliament (Senate), where the bill can only be adopted or rejected in its entirety. In other words, there is no possibility to make any amendments to the existing language. Although no date has been scheduled, the Senate is expected to discuss CERP shortly, hopefully leading to its enactment in July or October this year.

Our dedicated CERP [page](#) provides insights into the new legislation, materials from a seminar that De Brauw held on the topic, and additional De Brauw coverage and materials, including English translations of the latest and final version of the bill.

More information

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