

## QRC - ACT ON COURT CONFIRMATION OF EXTRAJUDICIAL RESTRUCTURING PLANS

### **Legal framework is not a formal insolvency procedure**

#### **Entry requirement**

It is reasonably plausible that the debtor will be unable to pay its future debts as they fall due (e.g. a loan that is due in 6-12 months)

#### **Public version (EIR)**

- Dutch courts have jurisdiction in accordance with the EIR recast, i.e. debtor has its COMI in the Netherlands
- Automatic recognition within the EU
- Public proceedings

#### **Undisclosed version (non-EIR)**

- No COMI requirement
- Dutch courts have jurisdiction if affected party is situated in the Netherlands or the restructuring has sufficient connection with the Netherlands (e.g. significant assets or activities in the Netherlands, debtor is member of a group mainly situated in the Netherlands, or substantial part of debt is governed by Dutch law)
- No automatic recognition, but likely recognition under the UNCITRAL Model Law and possibly under the Recast Brussels Regulation, the Lugano Convention, international treaties or private international law (as applicable)
- Undisclosed proceedings, exempt from any publication requirement

#### **Initiative for restructuring**

Restructuring may be initiated by:

- debtor, or
- creditor, shareholder and employees: the court may appoint a plan expert who will design, negotiate and file the restructuring plan on behalf of the debtor (debtor's consent required for SMEs)

#### **Debtor-in-possession**

Debtor remains in full control throughout the entire procedure.

#### **Court-appointed professionals (without power over debtor)**

- Plan expert: authorised to design and negotiate the restructuring plan on behalf of the debtor and to submit the plan for court confirmation (see above)
  - Observer: monitors the restructuring process from the perspective of safeguarding the joint creditors' interests
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### **Contents of a restructuring plan**

- Debtor is free to determine the contents
- Rights of secured and unsecured creditors as well as shareholders (except for claims arising from employment contracts)
- Group obligations (without requiring the group company's restructuring)
- Onerous contracts may be terminated
- Ipso facto clauses are deactivated

### **Voting and approval**

- All affected creditors and shareholders are eligible to vote
- Approval requires that two-thirds of the total debt (or in case of shareholders, subscribed capital) exercising voting rights within a class, vote in favour
- Cross-class cram-down is possible

### **Court confirmation**

- Threshold for requesting court confirmation: approval of the restructuring plan by at least one in-the-money class or the class in which the value breaks
- Result: restructuring plan becomes binding on all creditors and shareholders eligible to vote, regardless of their actual vote and without option of appeal

### **Court confirmation as basic rule**

Grounds for refusal are in line with market practice. Court checks formal requirements, whether proper performance of the restructuring plan is guaranteed, and applies a best-interests-of-creditors test. Restructuring plan also had to adhere to an absolute priority rule with a reasonableness exception.

### **Protection of rescue financing and restructuring efforts**

Protection for the restructuring, for new financing (including the provision of security) or for set-off from avoidance and claw-back actions, provided the court consented to the relevant legal acts.

### **Moratorium**

- At request of debtor or plan expert (see above): stay of 4 months, with possible extension up to a maximum of 8 months
- Prevents all parties from claiming or taking recourse against debtor's assets without court consent (except for collateral provided in relation to a financial collateral agreement)
- Debtor may continue its regular business operations (including through use and disposal of goods and through collecting claims) on condition that the interests of the affected parties are sufficiently safeguarded.

### **Deal certainty**

- Court can make provision for supporting measures such as the lifting of attachments and suspension of a request for the opening of insolvency proceedings
  - Bespoke interim relief is possible
  - Certainty from the start: any procedural or substantive matter may be presented to the court prior to voting
  - Expert pool of judges that hand down final decisions
  - Timelines can be limited to six weeks
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