

Act on the confirmation of private restructuring plans (WHOA)

Unofficial English translation by CMS

Introduction

The Act on the confirmation of private restructuring plans (Wet homologatie onderhands akkoord or WHOA) was submitted to the Dutch parliament in 2019 and introduces a framework under which tailor-made (financial) restructuring plans can be implemented outside formal insolvency proceedings. The WHOA combines elements of the English Scheme of Arrangements, US Chapter 11 and the EU Restructuring Directive (EU 2019/1023). The Act will enter into force on 1 January 2021.

In summary

The WHOA provides for a fast and efficient restructuring procedure outside of formal insolvency which, in principle, can be completed within a matter of months. The restructuring plan may bind (a selection of) secured, unsecured and preferential creditors as well as shareholders, whilst at the same time adequately protecting the interests of any dissenting party.

The WHOA enables both the debtor as well as other important stakeholders the opportunity to, at an early stage and outside the public domain, avoid an uncontrolled insolvency and preserve the debtor's value. In addition, the WHOA provides for a high level of deal certainty as a result of, amongst others, the various supportive measures, offers flexibility on the contents of the restructuring plan and has the option to be (automatically) recognised throughout the EU.

With the Dutch courts assuming jurisdiction in a wide variety of cases, the WHOA offers a world class platform for international debt restructurings.

Unofficial translation

With this document we provide you with the – unofficial – English translation of the Act on confirmation of private restructuring plans.

CMS experts

Should you have any questions or do you want to know more about the WHOA, do not hesitate to contact us or visit our webpage [here](#).



Marcel Groenewegen

Partner

T +31 20 3016 410

E marcel.groenewegen@cms-dsb.com



Marlous de Groot

Counsel Advocaat

T +31 20 3016 311

E marlous.degroot@cms-dsb.com



Etienne Courbois

Counsel Advocaat

T +31 20 3016 446

E etienne.courbois@cms-dsb.com



Jonathan van Ee

Advocaat

T +31 20 3016 380

E jonathan.vanee@cms-dsb.com





2020

414

Act of 7 October 2020 to amend the Bankruptcy Act in connection with the implementation of the possibility of court confirmation of a private restructuring plan (Act on the confirmation of private restructuring plans

We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc., etc., etc.

Greetings to all ye who hear or read these presents! Be it known:

As We have considered the desirability of making provisions in the Bankruptcy Act on the basis of which the court may proceed to confirm a private restructuring plan concerning the restructuring of debts;

Having heard the Advisory Division of the Council of State, and having consulted with the States General, We have approved and decreed as We hereby approve and decree:

ARTICLE I

The Bankruptcy Act is amended as follows:

A

After Article 3c, an article is inserted which reads:

Article 3d

1. If a debtor's own application or another application for bankruptcy and a request for the designation of a restructuring expert as referred to in Article 371 are pending before the court at the same time, the latter request is dealt with first.
2. The handling of a debtor's own application or another application for bankruptcy is stayed in any event until the court has ruled on the request for the designation of a restructuring expert. If the court grants the request, it will at the same time also announce a cooling-off period in accordance with Article 376 and the stay will remain in force during that period.

Aa

The first paragraph of Article 5 will read as follows:

1. The requests referred to in the previous article and in Articles 5a, 8, 9, 10, 11, 15c(2), 42a, 67, 155, 166, 198, 206, 371(1), 376(1), 378(1), 379(1) and 383(1) must be filed by an attorney.

B

After Article 42, Article 42a is inserted which reads:

Article 42a

A legal act performed after the debtor has filed at the courts registry a statement as referred to in Article 370(3), or after the court has designated a restructuring expert in accordance with Article 371, cannot be annulled by invoking the previous article if the court has approved that act at the debtor's request. The court grants said request if:

- a. performing the legal act is necessary for the continuation of the debtor's business while a restructuring plan is being prepared as referred in said articles, and
- b. at the time the approval is granted, it can be reasonably assumed that the interests of the debtor's collective creditors are served by this legal act while none of the interests of individual creditors are materially prejudiced.

C

After 'had been filed,' in Article 47, the following is inserted: 'and there was no suspension of the handling of that application in accordance with Articles 3d(2) and 376(2)(c)'.

D

A paragraph is added to Article 54, which reads:

3. A person who invokes setoff is acting in good faith as referred to in the first paragraph if this setoff:
 - a. takes place after the debtor has filed a statement at the courts registry as referred to in Article 370(3) or after the court has designated a restructuring expert in accordance with Article 371, and
 - b. is invoked in the context of financing the continuation of the debtor's business and does not envisage to restrict that financing.

E

Two paragraphs are added to Article 215, which read:

3. If an application for suspension of payments and a request to designate a restructuring expert as referred to in Article 371 are pending before the court at the same time, the latter request is handled first and, notwithstanding the second paragraph, no preliminary suspension of payments is granted.

4. In any event, the handling of the application for suspension of payments is suspended until the court has decided on the request to designate a restructuring expert. If the court grants the request, then at the same time it will order a cooling-off period in accordance with Article 376 and the stay will remain in force during that period.

F

A new section is added after Article 368, which reads:

SECTION TWO CONFIRMATION OF A PRIVATE RESTRUCTURING PLAN

§ 1. General provisions

Article 369

1. The provisions of this section do not apply to a debtor being a natural person who does not independently conduct a profession or business, or a bank as referred to in Article 212g(a), or an insurer as referred to in Article 213(a).
2. The provisions of this section concerning creditors or shareholders with voting rights apply to creditors and shareholders with voting rights pursuant to Article 381(3).
3. If the debtor is an association or cooperative, then the provisions of this section concerning shareholders apply *mutatis mutandis* to the members.
4. The provisions of this section do not apply to rights of employees of the debtor under employment contracts within the meaning of Article 7:610 of the Dutch Civil Code.
5. Except in cases that involve the designation of a restructuring expert as referred to in Article 371, the provisions of this section do not apply if the debtor has proposed a restructuring plan in the last three years that was rejected by all classes in a vote as referred to in Article 381 or that the court refused to confirm by virtue of Article 384.
6. A restructuring plan under this section may be prepared and proposed in either a private procedure outside bankruptcy or a public procedure outside bankruptcy.
7. Whether the Dutch court has jurisdiction to handle requests such as those referred to in this section is determined:
 - a. pursuant to the regulation referred to in Article 5(3), in so far as the requests are submitted in the context of a public procedure outside bankruptcy and that regulation applies, or
 - b. Article 3 of the Dutch Code of Civil Procedure.
8. The provisions of this section concerning the court apply to courts with territorial jurisdiction pursuant to Articles 262 or 269 of the Dutch Code of Civil Procedure to handle requests as referred to in this section. Once the court has declared its territorial jurisdiction to handle a request in the context of a private procedure or public procedure outside bankruptcy in respect of a debtor, that court also has territorial jurisdiction to the exclusion of other courts with territorial jurisdiction to hear all further requests pursuant to this section that are submitted in those proceedings in relation to that debtor. When multiple entities that collectively form a group as referred to in Article 2:24b of the Dutch Civil Code propose a restructuring plan pursuant to this section, they may jointly request one of the courts with territorial jurisdiction to handle all requests submitted pursuant to this section for the purpose of realizing a restructuring plan in relation to these legal entities.

9. Requests submitted to the court pursuant to this section are dealt with in court chambers, unless the restructuring plan is prepared and proposed in the context of a public procedure outside bankruptcy.
10. Decisions of the court pursuant to this section are not subject to any remedies unless determined otherwise.

§ 2. Proposing and voting on a restructuring plan

Article 370

1. If it can be reasonably assumed that the debtor will not be able to continue paying its debts, the debtor may propose a restructuring plan to its creditors and shareholders, or a number of them, that amends their rights and that can be confirmed by the court in accordance with Article 384.
2. If a third party, including a guarantor and a joint debtor, is liable for a debt of the debtor to a creditor as referred to in the first paragraph or has provided any form of security for payment of that debt, then Article 160 of the Bankruptcy Act applies mutatis mutandis, except in so far as this concerns a restructuring plan as referred to in Article 372(1). The third party may not recover from the debtor any amounts paid to the creditor after approval of the restructuring plan. If the third party pays a debt of the debtor in full or in part while the creditor is also offered rights for that debt on the basis of the restructuring plan, those rights transfer to the third party by operation of law if and in so far the creditor receives, as a result of the payment by the third party and the rights granted under the restructuring plan, a value that exceeds the amount of its claim as it existed before the confirmation of the restructuring plan.
3. As soon as the debtor starts to prepare a restructuring plan, the debtor will file a statement to that effect with the courts registry, where it will remain for no longer than one year. Filing the statement is free of charge. After the debtor has presented the restructuring plan to creditors and shareholders with voting rights, they may inspect the statement free of charge until the court has decided on the request referred to in Article 383(1), or until the report as referred to in Article 382 has been filed and the debtor gives notice therein that it will not submit such a request.
4. If the debtor proposes the restructuring plan within the context of a public procedure outside bankruptcy, then as soon as the court has taken a first decision pursuant to this section, the debtor will request the court clerk of the District Court of The Hague to immediately report the information referred to in Article 24 of the regulation mentioned in Article 5(3) in the registers referred to in Articles 19 and 19a and in the Dutch Government Gazette.
5. If the debtor is a legal entity, the board does not require approval of the general meeting or from a meeting of the holders of shares of a certain type or designation to propose a restructuring plan and to implement a restructuring plan that has been confirmed by the court in accordance with Article 384 and, in so far as and for as long as the following derogations are necessary and without prejudice to the principle of equal treatment of shareholders, Articles 38, 96, 96a, 99, 100(1), 107a and 108a and Title 5.3 of Book 2 of the Dutch Civil Code,

as well as Article 5:25ka of the Financial Supervision Act and any provisions under the articles of association or arrangements agreed either between the legal entity and its shareholders or between two or more shareholders amongst themselves in respect of the decision-making by the general meeting or a meeting of the holders of shares of a certain type or designation, do not apply. In so far as the implementation of a restructuring plan requires a resolution by the general meeting or a meeting of holders of shares of a certain type or designation, the restructuring plan confirmed by the court in accordance with Article 384 replaces that resolution.

Article 371

1. Each creditor, shareholder or statutory works council or employee representation legally established in the debtor's business may submit a request to the court to designate a restructuring expert who may propose a restructuring plan to the debtor's creditors and shareholders, or a number of these, in accordance with this section. The debtor may also submit such a request. In the latter event, Article 370(5) applies *mutatis mutandis*. If the request is granted, the debtor may not propose a restructuring plan on the basis of Article 370(1) for as long as the restructuring expert is designated. The debtor may submit a restructuring plan to the restructuring expert, requesting that it be proposed to the creditors and shareholders with voting rights.
2. If the court has not yet taken a decision in the context of this section, the applicant as referred to in the first paragraph will indicate in the request which of the procedures referred to in Article 369(6) it has chosen and the reasons on which that choice is based. Therefore, the request must include such information to enable the court to determine whether it has jurisdiction. If the request was not submitted by the debtor, the court will give the debtor an opportunity to express its views in a manner and within a period to be determined by the court regarding the choice for one of the procedures mentioned in Article 369(6). In the event of a dispute on this matter, the court decides which of the procedures mentioned in Article 369(6) will be applied. Article 370(4) applies *mutatis mutandis*, it being understood that the request referred to in that paragraph may be submitted by the restructuring expert or the debtor.
3. A request as referred to in the first paragraph is granted if the debtor will not be able to continue paying its debts in accordance with Article 370(1), unless there is *prima facie* evidence that this would not be in the interests of the collective creditors. A request to appoint a restructuring expert is granted in any event if it is submitted by the debtor itself or has the support of the majority of the creditors.
4. The court may appoint one or more experts to investigate whether the status of the debtor of not being able to continue to pay its debts exists as referred to in the previous paragraph. The first and fourth sentences of Article 378(6) and Article 371(7) and (8) apply *mutatis mutandis*.
5. Before taking a decision as referred to in the first paragraph, the court will offer the applicant described in the first paragraph, the debtor, and the observer referred to in Article 380, if appointed, an opportunity to express their views in a manner and within a period to be determined by the court. This also applies to decisions referred to in the tenth, twelfth and thirteenth paragraphs. In the latter three cases, the court will also summon the restructuring expert to be heard.

6. The restructuring expert shall perform his task in an effective, impartial and independent manner.
7. The restructuring expert is entitled to examine the debtor's accounts, records and other data carriers of which the restructuring expert deems examination necessary for the proper performance of his task.
8. The debtor or its directors, the shareholders, supervisory board members, if any, as well as those employed by the debtor, are obliged to provide the restructuring expert with all information as requested and in the manner specified. They will inform the restructuring expert at their own initiative of facts and circumstances which they know or ought to know to be relevant to the restructuring expert for the proper performance of his task and will provide all cooperation necessary to that end.
9. Except within the context of application of the provisions of this section, the restructuring expert will not share the information received with third parties.
10. The court determines the salary of the restructuring expert. The court also determines the maximum amount that the work of the restructuring expert and any third parties may cost. This amount may be increased by the court during the proceedings at the request of the restructuring expert. In so far as not agreed otherwise, these costs are paid by the debtor, it being understood that if the request to designate a restructuring expert is supported by a majority of the creditors, the creditors will bear the costs. To that end, the court may grant the designation under the condition that security is provided or an advance payment is transferred to the court's bank account.
11. The restructuring expert is not liable for damage caused by an attempt to realise a restructuring plan in accordance with this section, unless he can be seriously personally blamed for not acting as might be reasonably expected of a restructuring expert with sufficient experience and expertise who is accurately and diligently performing his task.
12. As soon as it becomes clear that a restructuring plan in accordance with this section cannot be realised, the restructuring expert will duly notify the court and request that their designation be withdrawn.
13. The designation ends by operation of law once the court confirms the restructuring plan in accordance with Article 384, unless the court determines in its confirmation decision that the restructuring expert's designation will continue for a period to be determined by the court. In addition, the court may dismiss the restructuring expert and replace him by another at any time after he is heard or properly summoned, either at his own request or at the request of one or more creditors, or at its own initiative.
14. If the court has not previously taken a decision in the context of this section and derives its jurisdiction from the regulation mentioned in Article 5(3), then the designation decision must indicate whether the procedure concerns main insolvency proceedings or territorial insolvency proceedings within the meaning of that regulation. Any creditor who has not yet been given an opportunity to express his views on the basis of paragraph five may challenge the decision during a period of eight days after the notice referred to in Article 370(4) on the basis of a lack of international jurisdiction as referred to in Article 5(1) of said Regulation.

Article 372

1. A restructuring plan as referred to in Article 370(1) may also provide for amending the rights of creditors in respect of legal entities that form a group together with the debtor as referred to in Article 2:24b of the Dutch Civil Code, provided that:
 - a. the rights of those creditors in respect of the relevant legal entities entail payment of or security for the performance of the debtor's obligations or obligations for which the legal entities are liable together with or alongside the debtor;
 - b. the legal entities involved are in a state as referred to in Article 370(1);
 - c. the legal entities involved have approved the proposed amendment, or the restructuring plan is proposed by a restructuring expert as referred to in Article 371, and
 - d. the court would have jurisdiction if these legal entities were to propose a restructuring plan under this section and were to submit a request as referred to in Article 383(1).
2. In the event of a restructuring plan as referred to in the first paragraph:
 - a. the debtor, or the restructuring expert as referred to in Article 371, must also provide the information referred to in Article 375 in respect of the legal entities referred to in the first paragraph, and
 - b. in assessing the request to confirm the restructuring plan, the court may also assess, either at its own initiative or upon request, whether the restructuring plan complies with Article 384 in respect of these legal entities.
3. The debtor, or the restructuring expert if designated, is exclusively authorised to submit the requests referred to in Articles 376(1), 378(1), 379(1) and 383(1) to the court on behalf of the legal entities referred to in the first paragraph.

Article 373

1. If the debtor has the status referred to in Article 370(1), then the debtor or the restructuring expert, if designated, may propose to a counterparty with which the debtor has concluded an agreement that this agreement be amended or terminated. If the counterparty does not agree to the proposal, then the debtor or the restructuring expert may prematurely terminate the agreement, provided that a restructuring plan has been proposed that has been confirmed by the court in accordance with Article 384 and the court grants leave thereby for this unilateral termination. In that event the notice of termination takes place by operation of law on the date on which the restructuring plan is confirmed by the court, subject to a notice period as specified by the debtor or the restructuring expert. If the court deems this period unreasonable, it may provide for a longer notice period when granting leave for termination, it being understood that a period of three months from the date of confirmation of the restructuring plan is sufficient in any event.
2. Following unilateral termination as referred to in the first paragraph, the counterparty is entitled to compensation of the damage it incurs due to the termination of the agreement. Section 10 of Title 1 of Book 6 of the Dutch Civil Code applies. The restructuring plan as referred to in Article 370(1) may provide for amending the future right to compensation of damage.

3. The preparation and proposal of a restructuring plan as referred to in Article 370(1), the designation of a restructuring expert as referred to in Article 371, and events and acts that are directly related thereto or to the implementation of the restructuring plan or are reasonably necessary therefore, do not constitute grounds for amending commitments or obligations or commitments vis-à-vis the debtor, for suspending performance of an obligation in respect of the debtor, or for terminating an agreement concluded with the debtor.
4. If a cooling-off period has been ordered in accordance with Article 376, then during that period, any failure by the debtor to perform that occurred prior to the cooling-off period does not constitute grounds for amending commitments or obligations vis-à-vis the debtor, for suspending performance of an obligation vis-à-vis the debtor or for terminating an agreement concluded with the debtor, to the extent that security is provided for the performance of new obligations that arise during the cooling-off period.

Article 374

1. Creditors and shareholders are placed into different classes if the rights they have in the liquidation of the debtor's assets in bankruptcy and the rights they are offered on the basis of the restructuring plan differ to such an extent that there is no comparable position. In any event, creditors or shareholders who have a different ranking in the recovery from the debtor's assets in accordance with Title 10 of Book 3 of the Dutch Civil Code, with any other law or an arrangement based thereupon, or with an agreement, are placed into different classes.
2. Unsecured creditors are collectively placed to one or more separate classes if:
 - a. at the time that the restructuring plan is put to a vote in accordance with Article 381, these creditors are a legal entity as referred to in Articles 395a and 396 of Book 2 of the Dutch Civil Code or a creditor who employs fifty persons or less at that time, or in respect of which a statement by virtue of the Commercial Register Act 2007 shows that it employs fifty persons or less, that has a claim arising from the delivery of goods or services or from an unlawful act referred to in Article 162 of Book 6 of the Dutch Civil Code, and
 - b. these creditors are offered a distribution in cash on the basis of the restructuring plan that is less than 20% of the amount of their claims or offered a right under the restructuring plan with a value that is less than 20% of the amount of their claims.
3. Creditors with priority that ensues from a right of pledge or mortgage as referred to in Article 278(1) of Book 3 of the Dutch Civil Code are placed into one or more classes of creditors with similar ranking only for the secured part of their claim, unless this does not affect the distribution of the value that is realised under the restructuring plan. For the remaining part of their claim, these creditors are placed to a class of creditors without priority. The determination of the secured part of the claim for this purpose is based on the value that the creditor would be expected to receive in a bankruptcy according to the statutory ranking on the basis of its right of pledge or mortgage.

Article 375

1. The restructuring plan contains all information that creditors and shareholders with voting rights need to reach an informed opinion prior to the vote as referred to in Article 381, including:
 - a. the name of the debtor;
 - b. in so far as applicable, the name of the restructuring expert;
 - c. in so far as applicable, the division into classes and the criteria on the basis of which creditors and shareholders were placed into one or more classes;
 - d. the financial consequences of the restructuring plan for each class of creditors and shareholders;
 - e. the value that is expected to be realised if the restructuring plan is put into effect;
 - f. the proceeds that are expected to be realised from liquidation of the assets of the debtor in bankruptcy;
 - g. the principles and assumptions used in calculating the values referred to in at (e) and (f);
 - h. if the restructuring plan involves the allocation of rights to creditors and shareholders: the time or times at which the rights will be allocated;
 - i. in so far as applicable, the new financing that the debtor is willing to obtain in the context of the implementation of the restructuring plan, and the reasons why this is necessary;
 - j. the manner in which the creditors and shareholders can obtain further information regarding the restructuring plan;
 - k. the procedure for voting on the restructuring plan and the time of the vote or the deadline for casting votes, and
 - l. in so far as applicable, the manner in which the works council or employee representation set up in the debtor's business in accordance with Article 25 of the Works Councils Act has been or will be asked to issue advice.
2. The following will be attached to the restructuring plan:
 - a. a properly documented statement of all assets and liabilities, and
 - b. a list containing:
 1. the names of the creditors and shareholders with voting rights or, if that is not possible, the creditors or shareholders by reference to one or more categories;
 2. the amount of their claim or the nominal amount of their share and, if applicable, a specification of the extent to which that amount is disputed and for which amount the creditor or shareholder is admitted to the vote, and
 3. a specification of the class or classes into which they have been placed.
 - c. in so far as applicable, the names of the creditors and shareholders that are not covered by the restructuring plan or, if that is not possible, by reference to one or more categories, together with an explanation of why they are not included in the restructuring plan;
 - d. information on the financial position of the debtor, and
 - e. a description of:
 1. the nature, extent and cause of the financial problems;
 2. what attempts have been made to resolve these problems;
 3. the restructuring measures that are part of the restructuring plan;
 4. the manner in which these measures contribute to a solution, and
 5. the time that is expected to be needed to implement these measures;

- f. in so far as applicable, a written statement explaining the serious ground as a result of which the unsecured creditors as referred to in Article 374(2) are offered a distribution in cash on the basis of the restructuring plan that is less than 20% of the amount of their claims or a right with a value that is less than 20% of the amount of their claims.
- 3. An order in council may determine what other information is to be included in the restructuring plan or the records attached thereto and the manner in which information is to be provided, and may also provide for a standardised form.

Article 376

- 1. If the debtor has filed a statement with the court clerk as referred to in Article 370(3) and has proposed a restructuring plan as referred to in the first paragraph of that article or undertakes to propose such a restructuring plan within a period of no more than two months, or the court has designated a restructuring expert in accordance with Article 371, the debtor or the restructuring expert may request the court to order a cooling-off period.
- 2. During the cooling-off period, which will apply for a period of no more than four months:
 - a. third parties may not exercise their authority to recover against goods belonging to the debtor's estate or to claim goods that are controlled by the debtor other than with leave from the court, provided those third parties have been informed that the court has ordered a cooling-off period or are aware of the fact that a restructuring plan is being prepared;
 - b. at the request of the debtor or the restructuring expert, if designated, the court may lift attachments, and
 - c. the consideration of a request seeking suspension of payments, a bankruptcy application submitted by the debtor itself or by a creditor is suspended.
- 3. The first, second and fifth sentences of Article 371(2) apply mutatis mutandis.
- 4. The court will grant the request referred to in the first paragraph if there is prima facie evidence that:
 - a. this is necessary for the continuation of the debtor's business during the preparation of and negotiations on a restructuring plan, and
 - b. at the time the cooling-off period is ordered, it can be reasonably assumed that it would be in the interests of the debtor's collective creditors and that the interests of third parties, the attaching party and the creditor referred to in the second paragraph submitting the bankruptcy application are not materially prejudiced.
- 5. If requested by the debtor or the restructuring expert, if appointed, before the maximum period of the cooling-off period as referred to in the second paragraph has expired, the court may extend this period by a period to be determined by the court, it being understood that the total period including extensions cannot exceed eight months. The debtor or the restructuring expert must plausibly demonstrate in their request that significant progress has been made in realising the restructuring plan. The latter will be deemed to be the case in any event if a request to confirm the restructuring plan as referred to in Article 383(1) has been submitted.
- 6. within derogation from the fifth paragraph, the cooling-off period will not be extended if:

- a. the cooling-off period was requested in the context of a private procedure outside bankruptcy, and
 - b. the debtor's centre of main interests as referred to in Article 3(1) of the regulation mentioned in Article 5(3) has been moved to a different member state in the three months preceding the time at which the court took its first decision on the basis of this section.
7. If the debtor has created a right of pledge in accordance with Article 239(1) of Book 3 of the Dutch Civil Code on a receivable or on the right of usufruct of such receivable, the pledgee is not authorised to issue the notice referred to in paragraph 3 of that article or to receive or set off payments against a claim against the debtor during the cooling-off period, provided that the debtor has provided adequate alternative security for the pledgee's recovery by virtue of that pledge.
 8. Articles 241a(2) and (3), 241c and 241d apply *mutatis mutandis*, it being understood that application *mutatis mutandis* of Article 241a(3) concerns a term imposed on the debtor.
 9. At the request of the third parties, the attaching party and the creditor who submitted the bankruptcy application as referred to in the second paragraph, the court may make provisions as referred to in Article 379 in its decision to order a cooling-off period or during the period to which it applies. When ordering a general cooling-off period, the court may appoint an observer as referred to in Article 380 if it determines that this is necessary to protect the interests of the creditors or the shareholders.
 10. If the requirements in the first and fourth paragraphs are no longer satisfied, the court will lift the cooling-off period. It may do so at its own initiative or at the request of the debtor, the restructuring expert, if designated, or the third parties, the attaching party and the creditor referred to in the second paragraph who submitted the bankruptcy application.
 11. The court will not decide on granting authority as referred to Article 376(2)(a) or on the requests referred to in the fifth, ninth and tenth paragraphs before it has offered the debtor, the restructuring expert, if designated, the observer referred to in Article 380, if appointed, and the third parties, the attaching party and the creditor who submitted the bankruptcy application referred to in the second paragraph an opportunity to express their views in a manner and within a period to be determined by the court.
 12. Article 371(14) applies *mutatis mutandis*.
 13. The request for suspension of payments or the bankruptcy application submitted by the debtor itself or a creditor, as referred to at (c) of the second paragraph, expires by operation of law once the restructuring plan has been confirmed by the court in accordance with Article 384. If the creditor was unaware of the fact that a restructuring plan was being prepared at the time of submitting the application for bankruptcy, then the court will decide whether the debtor must compensate the creditor for the costs of the action.

Article 377

1. If the debtor was authorised to use, consume or dispose property or to collect claims before a cooling-off period as referred to in Article 376 was ordered, the debtor retains this right during the cooling-off period in so far as this falls within the ordinary course of the debtor's business.
2. The debtor may only exercise the authority referred to in the first paragraph if the interests of the third parties involved are adequately safeguarded.

3. The court will revoke the authority referred to in the first paragraph or will limit the exercise of this authority at the request of one or more third parties involved if the previous paragraph is no longer complied with. The court will not decide on this before having offered said third parties, the debtor, the restructuring expert as referred to in Article 371, if designated, and the observer as referred to in Article 380, if appointed, an opportunity to express their views in a manner and within a period to be determined by the court.

Article 378

1. Before the restructuring plan is put to a vote in accordance with Article 381(1), the debtor or the restructuring expert, as referred to in Article 371, if designated, may request the court to rule on any aspects that are relevant in the context of realising a restructuring plan in accordance with this section, including:
 - a. the contents of the information provided in the restructuring plan or the records attached to it, as well as the values, principles and assumptions as referred to in Article 375(1) (e)-(g) applied by the debtor;
 - b. the class formation;
 - c. the admission of a creditor or a shareholder for voting purposes;
 - d. the procedure for the vote and the period within which the vote could reasonably be held after the restructuring plan has been submitted to creditors and shareholders with voting rights or after they have been notified of how they may inspect it;
 - e. if the restructuring plan is accepted by all classes, whether a ground for refusal as referred to in Article 384(2) and (3) exists that could still impede confirmation of the restructuring plan;
 - f. if the restructuring plan is not accepted by all classes, whether a ground for refusal as referred to in Article 384(2), (3) and (4) exists that could impede confirmation of the restructuring plan; and
 - g. if the debtor is a legal entity as referred to in Articles 381(2) and 383(2), whether the board is refusing without good cause to consent to a vote on the restructuring plan or the submission of a request to confirm the restructuring plan,
2. The first, second and fifth sentences of Article 371(2) apply mutatis mutandis.
3. In so far as possible, the court will consider the requests submitted to it in accordance with the first paragraph jointly and at a single hearing.
4. If the court receives a request pursuant Article 378(1) to rule on the admission to the vote of a creditor or shareholder, or on the amount of the claim of a creditor with voting rights or the nominal amount of the share of a shareholder with voting rights, the court will determine whether and up to what amount such creditor or shareholder will be admitted to the vote. Article 147 applies mutatis mutandis.
5. If the court receives a request pursuant to Article 378(1)(g) to rule on the board's refusal to grant the consent referred to in that article and to establish that the board does not have good cause for that refusal then, at the request of the restructuring expert, the court may determine that its decision has the same effect as the consent of the board.
6. If the court deems this necessary in the context of a decision it is to take, it may appoint one or more experts to conduct an investigation and to issue a reasoned report of findings within a period to be determined by the court,

which may be extended if necessary. The experts will file their report with the court clerk, where it will be available for inspection by creditors and shareholders with voting rights. Article 371(7) and (8) apply *mutatis mutandis*. The court may dismiss and replace an expert at any time, after having heard or properly summoned them, either at the expert's request or at its own initiative.

7. If information that is needed for the requested decision is lacking, the court may allow the debtor or the restructuring expert a reasonable period to provide the information that is lacking before taking a decision as referred to in the first and fourth paragraphs.
8. The court will not take a decision as referred to in the first and fourth paragraphs before offering the debtor or the restructuring expert, if designated, the observer as referred to in Article 380, if appointed, and the creditors and shareholders whose interests are directly affected by the decision, an opportunity to express their views in a manner and within a period to be determined by the court. If the court is asked to take a decision as referred to in the fourth paragraph, the preceding sentence applies in any event to the creditor or shareholder referred to in that paragraph.
9. Decisions of the court on the basis of this article are only binding on those creditors and shareholders who were given an opportunity by the court to express their views on the basis of the previous paragraph.
10. Article 371(14) applies *mutatis mutandis*.

Article 379

1. If the debtor has filed a statement with the court clerk as referred to in Article 370(3), or if the court has designated a restructuring expert in accordance with Article 371, then at the request of the debtor or the restructuring expert, or at its own initiative, the court may issue such rulings or make such provisions as it deems necessary to safeguard the interests of the creditors or the shareholders.
2. Article 371(2), first, second and fifth sentences and Article 371(14) apply *mutatis mutandis*.

Article 380

1. If the restructuring plan has been prepared by the debtor in accordance with Article 370, a provision as referred to in Article 379 may be the appointment of an observer. The observer's task is to supervise the realisation of the restructuring plan, with due regard for the interests of the collective creditors.
2. Once it has become clear that the debtor will be unable to realise a restructuring plan in accordance with this section or that the interests of the collective of creditors are harmed, the observer will notify the court thereof. In that event, the court will offer the observer and the debtor an opportunity to express their views in a manner and within a period to be determined by the court, and will draw from it such consequences as it deems appropriate. One such consequence may be that the court will appoint a restructuring expert as referred to in Article 371.
3. If a request to designate a restructuring expert as referred to in Article 371 is submitted and the court grants this request, the court will revoke the appointment of the observer.

4. Article 371(2), first, second and fifth sentences and Article 371(5)-(14) apply mutatis mutandis.

Article 381

1. The debtor or the restructuring expert as referred to in Article 371, if designated, will make the restructuring plan available to creditors and shareholders with voting rights for a reasonable period that is not shorter than eight days before the vote, or will notify them of how they may inspect it, so that they can reach an informed opinion .
2. The restructuring expert may only present the restructuring plan to the creditors and shareholders with voting rights with consent from the debtor if:
 - a. the restructuring expert was designated at the request of one or more creditors or of the works council or employee representation that is set up in the debtor's business, and
 - b. the debtor or, if the debtor is a legal entity, the group as referred to in Article 2:24b of the Dutch Civil Code to which the debtor belongs, operates a business that employs fewer than 250 people and that had an annual turnover in the preceding financial year that did not exceed EUR 50 million or a balance sheet total at the end of the preceding financial year that did not exceed EUR 43 million.

If the debtor is a legal entity, the shareholders may not in an unreasonable manner prevent the board from giving its consent.
3. Creditors and shareholders with voting rights are creditors and shareholders whose rights are amended under the restructuring plan.
4. If the debtor or the restructuring expert proposes a restructuring plan that also concerns rights in which most if not all of the economic interest is held by party other than the creditor, and as a result of which the position of that other party, in the circumstances of the case, must be reasonably equated with that of a creditor as referred to in the third paragraph, then the debtor or the restructuring expert may invite this other party, instead of the creditor, to vote on the restructuring plan. In that event, the provisions of this section in respect of the creditor apply to that other party.
5. If the debtor or the restructuring expert proposes a restructuring plan that also concerns shares for which depositary receipts have been issued, then the debtor or the restructuring expert may invite the holder of the depositary receipts, instead of the shareholder, to vote on the restructuring plan. In that event, the provisions of this section in respect of the shareholder apply to the holders of the depositary receipts. The same applies to usufructuaries.
6. The vote on the restructuring plan will take place for each class of creditors or shareholders, in accordance with the information provided in Article 375(1)(k), in a meeting held physically or by a means of electronic communication, or in writing.
7. A class of creditors has accepted the restructuring plan if the decision to accept was taken by a group of creditors that collectively represent two-thirds of the total amount of claims belonging to the creditors who cast a vote in that class.
8. A class of shareholders has accepted the restructuring plan if a group of shareholders that together represent two-thirds of the total amount of the issued capital of the shareholders who cast a vote in that class has voted in favour.

Article 382

1. The debtor or the restructuring expert as referred to in Article 371(1), if designated, will draw up a report as soon as possible, but in any event within seven days after the vote, containing:
 - a. the names of the creditors and shareholders or, if that is not possible, a reference to one or more categories of creditors and shareholders who have voted, and whether they voted in favour of or against the restructuring plan, together with the amount of their claims or the nominal amount of their shares;
 - b. the result of the vote; and
 - c. whether the debtor or the restructuring expert intends to submit a request as referred to in Article 383(1) and, if so, what otherwise occurred in connection with the vote or, if applicable, at the meeting at which the vote took place, that is relevant in the context of that request.
2. The debtor or the restructuring expert will immediately enable that the creditors and the shareholders with voting rights are able to inspect the report. If the debtor or restructuring expert has submitted a request as referred to in Article 383(1), it will file the report with the court clerk. The report will be made available there free of charge for inspection by the creditors and the shareholders with voting rights until the court has decided on the request referred to in Article 383(1).

§ 3. Confirmation of the restructuring plan

Article 383

1. If at least one class of creditors has accepted the restructuring plan, the debtor or the restructuring expert as referred to in Article 371, if designated, may submit a written request to the court to confirm the restructuring plan. If the restructuring plan contains an amendment of the rights of creditors with a claim that would expected to be satisfied in full or in part in liquidation of the debtor's assets in bankruptcy, that one class referred to in the preceding sentence must consist of creditors who fall within this category of creditors.
2. The restructuring expert may only submit a request to confirm the restructuring plan with consent from the debtor if:
 - a. the restructuring expert was designated at the request of one or more creditors or of the works council or employee representation that is set up in the debtor's business;
 - b. not all classes have accepted the restructuring plan, and
 - c. the debtor or, if the debtor is a legal entity, the group as referred to in Article 2:24b of the Dutch Civil Code to which the debtor belongs, operates a business that employs fewer than 250 people and that had an annual turnover in the preceding financial year that did not exceed EUR 50 million or a balance sheet total at the end of the preceding financial year that did not exceed EUR 43 million.
If the debtor is a legal entity, the shareholders may not in an unreasonable manner prevent the board from giving its consent.
3. The first, second and fifth sentences of Article 371(2) apply mutatis mutandis.
4. The court will render a decision scheduling the hearing at which the confirmation will be assessed as soon as possible. If the debtor submits a request to confirm a restructuring plan that has not been accepted by all classes and the court has not yet designated a restructuring expert as referred to in Article 371 or appointed an observer as referred to in Article 380, then the court will still appoint an observer in the same decision.

5. The debtor or the restructuring expert will immediately inform the creditors and the shareholders with voting rights of the decision referred to in the fourth paragraph.
6. The hearing is held at least eight days and no more than fourteen days after the request to confirm and the report as referred to in Article 382 is filed for inspection with the court clerk.
7. If the debtor or the restructuring expert intends to utilise the possibility of unilaterally terminating an agreement in accordance with Article 373(1), then the confirmation request will also include a request seeking the court's leave to terminate that agreement.
8. Until the day of the hearing referred to in the fourth paragraph, creditors and shareholders with voting rights may submit to the court a written, reasoned request to deny the request for confirmation. Until that time, the counterparty to the agreement referred to in the previous paragraph may submit a written, reasoned request to deny the requested leave for termination referred to in that paragraph.
9. A creditor, shareholder or counterparty as referred to in the previous paragraph may not invoke a ground for refusal if it did not raise an objection to that effect with the debtor or the restructuring expert, if designated, promptly after it discovered or reasonably ought to have discovered the possible existence of that ground for refusal.

Article 384

1. If the court has jurisdiction to hear the request to confirm the restructuring plan, it will issue its reasoned judgment as soon as possible granting this request and, if applicable, a request for leave to terminate an agreement as referred to in Article 383(7), unless one of the grounds for refusal as referred to paragraphs 2-5 arises.
2. The court will deny a request to confirm the restructuring plan if:
 - a. The state of the debtor as referred to in Article 370(1) does not exist;
 - b. the debtor or the restructuring expert has not complied with all of their obligations in respect of all creditors and shareholders with voting rights as referred to in Articles 381(1) and 383(5), unless the creditors and shareholders in question confirm that they accept the restructuring plan;
 - c. the restructuring plan or the records attached to it do not contain all of the information prescribed in Article 375, the class formation does not meet the requirements of Article 374, or the voting procedure did not comply with Article 381, unless such a default reasonably could not have led to a different outcome of the vote;
 - d. a creditor or the shareholder should have been admitted to the vote on the restructuring plan for a different amount, unless that decision reasonably could not have led to a different outcome of the vote;
 - e. performance of the restructuring plan is not sufficiently safeguarded;
 - f. the debtor intends to obtain new financing to implement the restructuring plan and the interests of the collective creditors will be essentially harmed as a result thereof;
 - g. the restructuring plan was realised through deception, by favouring one or more creditors or shareholders with voting rights, or by other unfair means, regardless of whether this was with the cooperation of the creditor or any other party;

- h. the salary and disbursements of the restructuring expert or observer designated or appointed by the court, respectively, in accordance with Articles 371, 378(6) and 380 have not been paid or no security for payment has been provided, or
 - i. there are other reasons that oppose the restructuring plan.
3. At the request of one or more creditors or shareholders with voting rights who rejected the restructuring plan or who wrongly were not admitted to the vote, the court may deny a request for confirmation of the restructuring plan if there is prima facie evidence that these creditors or shareholders will be worse off under the restructuring plan than they would have been in the event of liquidation of the debtor's assets in bankruptcy.
 4. At the request of one or more creditors or shareholders with voting rights who did not accept the restructuring plan and who were placed in a class that did not accept the restructuring plan, or who wrongly were not admitted to the vote and should have been placed in a class that did not accept the restructuring plan, the court shall deny a request for confirmation of the restructuring plan that has not been accepted by all classes if:
 - a. in the distribution of the value realised with the restructuring plan, a class of creditors as referred to in Article 374(2) is offered a distribution in cash that is less than 20% of the amount of their claims, or to whom, pursuant to the restructuring plan, a right will be offered with a value that represents less than 20% of the amount of their claims, while no compelling ground for doing so has been demonstrated;
 - b. the distribution of the value realised with the restructuring plan deviates from the ranking that applies upon recovery against the debtor's assets in accordance with Title 10 of Book 3 of the Dutch Civil Code, with any other law or arrangement based thereupon or under a contractual arrangement, to the detriment of the class that did not accept the restructuring plan, unless there is a reasonable ground for such deviation and the interests of said creditors or shareholders are not prejudiced as a result;
 - c. the said creditors, not being creditors as referred to in subsection d, are not entitled on the basis of the restructuring plan to opt for a distribution in cash in the amount that they could have expected to be paid in cash in the event of a liquidation of the debtor's assets in bankruptcy, or
 - d. the said creditors with priority arising from a right of pledge or mortgage as referred to in Article 287(1) of Book 3 of the Dutch Civil Code who have issued financing to the debtor in the course of their business and, based on the restructuring plan, in the context of an amendment of their rights, have been offered shares or depositary receipts for those shares without also being entitled to opt for a distribution in a different form.
 5. At the request of the counterparty to the agreement, the court will deny the request for leave to terminate the agreement referred to in Article 383(7) on the ground referred to in Article 384(2)(a).
 6. Article 378(6) applies mutatis mutandis.
 7. The court will not decide as referred to in the first paragraph before offering the debtor, the restructuring expert, if designated, the observer as referred to in Article 380, if appointed, and the creditors or shareholders with voting rights, or the counterparty, if they have submitted a request as referred to in Article 383(8) for denial by the court of the request for confirmation or the request for leave to terminate the agreement as referred to in Article 383(8), an opportunity to express their views in a manner and within a period to be further determined by the court.

8. Article 371(14) applies mutatis mutandis.

§ 4. The consequences of confirmation of the restructuring plan

Article 385

The confirmed restructuring plan is binding on the debtor and on all creditors and shareholders with voting rights. If the vote on the restructuring plan was not cast by the creditor or shareholder but by a third party in accordance with Article 381(4) or (5), then the restructuring plan is nevertheless binding on the creditor or shareholder.

Article 386

For the creditors with voting rights whose claims are undisputed by the debtor, the confirmation judgment constitutes an enforceable title against debtor and against the persons that have been admitted to the restructuring plan as guarantors, in so far as the creditors obtain a claim for payment of an amount of money on the basis of the restructuring plan.

Article 387

1. With every failure in the performance of the restructuring plan, the debtor is in default and is obliged to compensate the damage incurred by the creditors or shareholders with voting rights as a result, unless the failure cannot be attributed to the debtor. Article 75 and Section 10 of Title 1 of Book 6 of the Civil Code apply mutatis mutandis.
2. The restructuring plan may exclude rescission of the restructuring plan. If the restructuring plan does not contain a provision to that effect, Article 165 applies mutatis mutandis.

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At the end of Article 362(2), the following is added: ', with the exception of Articles 262 and 269 of that code in so far as requests are concerned that are submitted on the basis of the second section of Title IV within the context of a private procedure or a public procedure outside bankruptcy.

ARTICLE II

In the Court Fees (Civil Cases) Act (*Wet griffierechten burgerlijke zaken*), a new Article 19a is inserted which reads:

Article 19a

1. For the submission of requests as referred to in Articles 42a, 371(1), 376(1), 377(3), 378(1), 379(1), and 383(7) of the Bankruptcy Act, the submitting party will be charged the court fee for cases other than subdistrict court cases concerning a claim of undetermined value, on the basis of the table added as an appendix to this act.
2. For the submission of a request to confirm a restructuring plan as referred to in Article 383(1) of the Bankruptcy Act, the submitting party will be charged the court fee for cases other than subdistrict court cases for a claim, or a request amounting to more than EUR 100,000, on the basis of the table added as an appendix to this act.

3. For the submission of a request to deny confirmation of the restructuring plan as referred to in Article 383(8) of the Bankruptcy Act, the creditor or shareholder with voting rights will be charged the court fee for cases other than subdistrict court cases, on the basis of the table added as an appendix to this act. The amount of the court fee is determined by reference to the amount of their claim or the nominal amount of their share.
4. In the application of the first and second paragraphs, if the request is submitted by a restructuring expert, then the court fee is charged to the debtor.

ARTICLE IIA

Within three years after this act has entered into force, our Minister for Legal Protection will send to the States General a report on the effectiveness and the effects of this act in practice.

ARTICLE III

This act enters into force on a date to be determined by Royal Decree, which may differ for the various articles or parts thereof.

ARTICLE IV

This act is cited as: Act on the confirmation of private restructuring plans.

We order and command that this act will be published in the Bulletin of Acts and Decrees and that all ministries, authorities, tribunals and officials concerned will take responsibility for its proper implementation.

Issued in The Hague, 7 October 2020

Willem-Alexander

The Minister for Legal Protection,

S. Dekker

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The Minister of Justice and Security

F.B.J. Grapperhaus



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