

Decree determining the time at which the Act on the confirmation of private restructuring plans takes effect

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Decree of 26 October 2020 determining the time at which the Act on the confirmation of private restructuring plans takes effect

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

As proposed by Our Minister for Legal Protection on
15 October 2020, Legislation and Legal Affairs Directorate, no. 3055566;
In light of Article III of the Act on the confirmation of private restructuring plans;

Have approved and understood:

Only article

The Act on the confirmation of private restructuring plans takes effect on 1 January 2021.

Our Minister for Legal Protection is charged with the execution of this decree that will be published in the Bulletin of Acts and Decrees.

The Hague, 26 October 2020

Willem-Alexander

The Minister for Legal Protection,
S. Dekker

Issued on the *third* day of November 2020

The Minister of Justice and Security,
F.B.J. Grapperhaus

EXPLANATORY MEMORANDUM

This decree provides for the taking of effect of the Act on the confirmation of private restructuring plans (*Wet Homologatie onderhands akkoord*; hereinafter: WHOA) on 1 January 2021. The WHOA provides for two procedures within which a private restructuring plan can be achieved in the event of insolvency: 1) a private procedure outside bankruptcy, and 2) a public procedure outside bankruptcy (Article 369(6) Bankruptcy Act). The public procedure outside bankruptcy will be reported to the European Commission, requesting its inclusion in Annex A to the Insolvency Regulation.¹ The inclusion of the public procedure outside bankruptcy in said annex involves a procedure that takes some time. In view of the importance of rapid implementation of the WHOA, that procedure will not be awaited for. For the sake of clarity, the following should be noted.

Before the court decides on requests submitted within the context of realising the restructuring plan, it must first establish whether it has jurisdiction to hear those requests. Once the public procedure has been included in Annex A to the Insolvency Regulation, determinant within the context of that procedure is whether the debtor's centre of main interests (the "COMI") is located in one of the EU Member States (with the exception of Denmark).² In such a case, whether the Dutch court has jurisdiction will be determined on the basis of the Insolvency Regulation because of the inclusion of the public procedure outside bankruptcy in Annex A thereto. As long as the public procedure outside bankruptcy has not been included in Annex A to the Insolvency Regulation, the question whether the Dutch court has jurisdiction must be answered on the grounds of Article 3 of the Dutch Code of Civil Procedure (DCCP).

The Minister for Legal Protection,

S. Dekker

¹ Regulation 2015/848 of 20 May 2015 on insolvency proceedings, OJ EU L 141/19.

² "COMI" is a term that is used in Article 3(1) of the Insolvency Regulation. It concerns "the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties".



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