

## UNOFFICIAL TRANSLATION OF THE DRAFT ACT ON COURT CONFIRMATION OF EXTRAJUDICIAL RESTRUCTURING PLANS (WET HOMOLOGATIE ONDERHANDS AKKOORD)<sup>1</sup>

### DRAFT Amendment of the Bankruptcy Act in view of the introduction of the possibility of court confirmation of extrajudicial restructuring plans (Act on Court confirmation of extrajudicial restructuring plans)

#### BILL

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

Greetings to all who will see or hear these read, salute! Be it known:

Whereas We have considered that it is desirable to make an arrangement in the Bankruptcy Act on the basis of which the court can proceed to approve an extrajudicial plan concerning the restructuring of debts;

Thus it is that We, having heard the Advisory Division of the Council of State, and in mutual consultation with the States General, have approved and understood, as We hereby approve and understand:

#### Article I

The **Bankruptcy Act** is amended as follows:

A

An Article is inserted after Article 3c, reading:

#### Article 3d

1. If a bankruptcy petition and a petition for the appointment of a plan expert as referred to in Article 371 are pending simultaneously, the latter is dealt with first.
2. In any event, the hearing of the bankruptcy petition is suspended until the court has ruled on the petition for the appointment of the plan expert. If the court grants the

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<sup>1</sup> Based on Parliamentary Document *Eerste Kamer, vergaderjaar 2019-2020, 35 249, A*

request, it will in addition order a stay in accordance with Article 376 and the suspension will remain in force during that period.

Aa

The first paragraph of Article 5 will read:

3. 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) are filed by an attorney.

B

An Article 42a is inserted after Article 42, reading:

### **Article 42a**

A legal act performed after the debtor has filed a statement with the court registry as referred to in Article 370(3), or a plan expert has been appointed by the court in accordance with Article 371, may not be annulled on the grounds of the previous article, if the court has granted authorisation for that legal act at the request of the debtor. The court honours this request if:

- (a) the performance of the legal act is necessary for the debtor's business to continue during the preparation of a restructuring plan as referred to in the said Articles, and
- (b) at the time the authorisation is granted, it is reasonable to assume that the interests of the debtor's joint creditors would be served by such an act, while none of the individual creditors would be materially harmed in their interests.

C

In Article 47, the words 'and there was no suspension of the hearing of that request in accordance with Articles 3d(2) and 376(2), subsection c' will be inserted after the words 'was requested'.

D

A paragraph is added to Article 54, reading:

3. A person who carries out a set-off is in good faith as referred to in paragraph 1 if this:
  - (a) takes place after the debtor has filed a statement with the court registry as referred to in Article 370(3), or a plan expert has been appointed by the court in accordance with Article 371, and
  - (b) takes place in the context of the financing of the continuation of the debtor's business and does not aim to restrict that financing.

E

Two paragraphs are added to Article 215, reading:

3. If a request to grant a suspension of payments and a request for the appointment of a plan expert as referred to in Article 371 are pending simultaneously, the latter will first be considered and, contrary to the second paragraph, no provisional suspension of payments will be granted.
4. The hearing of the request and the provisional suspension of payments will in any event be suspended until the court has decided on the request for the appointment of the plan expert. If the court grants the request, it will in addition order a stay in accordance with Article 376 and the suspension will remain in force during that period.

F

A new section is inserted after Article 368, reading:

## **SECOND SECTION COURT CONFIRMATION OF AN EXTRAJUDICIAL RESTRUCTURING PLAN**

### *§ 1 General provisions*

#### **Article 369**

1. The provisions of this section do not apply to a natural person who does not conduct a profession or business, or to a bank as referred to in Article 212g(a), or an insurer as referred to in Article 213(a), as debtor.
2. The provisions of this section with respect to creditors or shareholders eligible to vote apply to creditors and shareholders who are eligible to vote pursuant to Article 381(3).
3. If the debtor is an association or cooperative, the provisions of this section with regard to shareholders apply *mutatis mutandis* to the members.
4. The provisions of this section do not apply to rights of employees employed by the debtor arising from employment contracts within the meaning of Article 610 of Book 7 of the Civil Code.
5. Except in cases involving the appointment of a plan expert as referred to in Article 371, the provisions of this section do not apply if, within the past three years, the debtor has offered a restructuring plan that has been rejected by all classes in a vote as referred to in Article 381 or in respect of which the court has refused court confirmation on the basis of Article 384.
6. On the basis of this section, a restructuring plan can be prepared and offered through a non-public procedure outside bankruptcy or through a public procedure outside bankruptcy.

7. Whether the Dutch court has jurisdiction to hear requests as referred to in this section is determined:
  - (a) on the basis of the regulation as referred to in Article 5(3), insofar as it concerns requests filed in the context of a public procedure outside bankruptcy and the said regulation applies; or
  - (b) Article 3 of the Code of Civil Procedure.
8. The provisions of this section with respect to the court apply to the court that has territorial jurisdiction to hear requests as referred to in this section pursuant to Articles 262 or 269 of the Code of Civil Procedure. Once a court has declared itself territorially competent to hear a request filed against a debtor in the context of a non-public procedure outside bankruptcy or a public procedure outside bankruptcy, this court, to the exclusion of other territorially competent courts, also has territorial jurisdiction to hear all further requests filed in this procedure in relation to this debtor on the basis of this section. If several legal entities, that together form a group as referred to in Article 24b of Book 2 of the Civil Code, simultaneously offer a restructuring plan on the basis of this section, they may jointly request one of the courts with territorial jurisdiction to hear all requests filed in relation to the realisation of the restructuring plan regarding these legal entities pursuant to this section.
9. Requests to the court in the context of this section are heard in chambers, unless the restructuring plan is prepared and offered in the context of a public procedure outside bankruptcy.
10. The decisions of the court under this section are not subject to appeal, unless otherwise provided.

## § 2 *The offer of and vote on a restructuring plan*

### **Article 370**

1. If a debtor is in a situation in which it may reasonably be assumed that it will be unable to continue paying its debts, it may offer its creditors and shareholders, or some of them, a restructuring plan providing for an amendment of their rights and which may be confirmed by the court in accordance with Article 384.
2. If a third party, including a guarantor and a co-debtor, is liable for a debt of the debtor to a creditor as referred to in paragraph 1 or has in any way provided security for the payment of that debt, Article 160 of the Bankruptcy Act applies *mutatis mutandis*, except in so far as it concerns a restructuring plan as referred to in Article 372(1). The third party cannot take any action against the debtor for the amount it pays to the creditor after the restructuring plan has been confirmed. If the third party pays a debt owed by the debtor or part thereof, while the creditor is offered rights for that debt or that part of the debt pursuant to the restructuring plan, then those rights are automatically transferred to the third party if and to the extent that the creditor as a result of the payment by the third party and the rights assigned pursuant to the restructuring plan would receive a value that exceeds the amount of its claim, as it existed prior to the court confirmation of the restructuring plan.

3. As soon as the debtor starts preparing a restructuring plan, it submits a statement to that effect with the court registry, where it will remain for a maximum period of one year. The deposit is free of charge. After the debtor submits the restructuring plan to the creditors and shareholders eligible to vote, they may consult the statement free of charge until the court has decided on the request as referred to in Article 383(1) or until the report as referred to in Article 382 has been filed and the debtor states in this report that it will not file such a request.
4. If the debtor offers the restructuring plan in the context of a public procedure outside bankruptcy, then as soon as the court has handed down a decision on the basis of this section for the first time, it requests the registrar of the District Court of The Hague to report immediately in the registers as referred to in Articles 19 and 19a and in the Netherlands Government Gazette the information as referred to in Article 24 of the regulation as referred to in Article 5(3).
5. If the debtor is a legal entity, the management board does not require the consent of the general meeting or a meeting of holders of shares of a certain class or designation to offer a restructuring plan as referred to in paragraph 1 and to execute a restructuring plan that has been confirmed by the court in accordance with Article 384, and, to the extent and as long as the following deviations are necessary and without impairing 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 Civil Code, as well as Article 5:25ka of the Financial Supervision Act and any statutory provisions of, or arrangements mutually agreed between the legal entity and its shareholders or between two or more shareholders with regard to decisionmaking by the general meeting or a meeting of shareholders of a certain class or specific designation, are not applicable. To the extent that the execution of a restructuring plan requires a resolution of the general meeting or a meeting of holders of shares of a certain class or designation, the restructuring plan confirmed by the court in accordance with Article 384 supersedes this.

## Article 371

1. Any creditor, shareholder or works council or employee representative body established at the debtor's business pursuant to a statutory provision may file a request with the court for the appointment of a plan expert who can offer a restructuring plan to the creditors and shareholders of a debtor, or some of them, in accordance with this section. The debtor may also file such a request. In the latter case, Article 370(5) applies *mutatis mutandis*. If the request is granted, the debtor cannot offer a restructuring plan on the basis of Article 370(1) for as long as the appointment of the plan expert lasts. The debtor is authorised to present a restructuring plan to the plan expert with the accompanying request to submit it to the creditors and shareholders that are eligible to vote.
2. If the court has not yet handed down a decision under this section, the petitioner, as referred to in paragraph 1, will state in the request which procedure as referred to in Article 369(6) it opts for and the grounds on which this is based. The request therefore contains such information as to allow the court to assess whether it has jurisdiction. If the request has not been submitted by the debtor, then the court gives the debtor the opportunity to comment on the choice of one of the procedures as

referred to in Article 369(6), in a manner and within a period to be determined by the court. In the event of a dispute in this respect, the court decides which of the procedures as referred to in Article 369(6), will apply. Article 370(4) applies mutatis mutandis, provided that the request as referred to in that paragraph may in this case be filed by the plan expert or the debtor.

3. A request as referred to in the first paragraph is granted if the debtor is in a situation as referred to in Article 370(1), unless it summarily appears that the interests of the joint creditors are not served by this. A request for the appointment of a plan expert is granted in any case if it is filed by the debtor itself or is supported by the majority of the creditors.
4. The court may appoint one or more experts to assess whether a situation as referred to in the previous paragraph exists. Article 378(6), first and fourth sentence, and seventh and eighth paragraph of that Article then apply mutatis mutandis.
5. The court does not decide on a request as referred to in the first paragraph until it has given the petitioner, as referred to in paragraph 1, the debtor and the observer, as referred to in Article 380, if appointed, the opportunity to express an opinion in a manner and within a period to be determined by the court. This also applies to the decisions as referred to in paragraphs 10, 12 and 13. In the latter three cases, the court also calls on the plan expert to be heard.
6. The plan expert performs its task effectively, impartially and independently.
7. The plan expert is entitled to consult the debtor's books, records and other data carriers of which it considers knowledge necessary for the proper performance of its task.
8. The debtor or its directors and shareholders and supervisory directors, if any, as well as those employed by the debtor, are obliged to provide the plan expert with all information required of them, in the manner thereby determined. They will inform the plan expert on their own initiative of facts and circumstances of which they know or ought to know that these are relevant to the proper performance of the plan expert's task and will cooperate fully to that end.
9. Except in the context of the application of the provisions of this section, the plan expert will not share the information obtained with third parties.
10. The court determines the salary of the plan expert. The court also fixes an amount which the costs of the plan expert and of the third parties consulted by it may not exceed. This amount may be increased during the procedure by the court at the request of the plan expert. Unless otherwise agreed, the debtor pays these costs, provided that if the request for the appointment of a plan expert is supported by the majority of the creditors, the creditors will bear the costs. For this purpose, the court may attach to the appointment the condition that security is provided or an advance payment is transferred into the bank account of the court.
11. The plan expert is not liable for damage resulting from the attempt to realise a restructuring plan in accordance with this section, unless it can be seriously blamed for not acting as may reasonably be required of a plan expert with sufficient insight and experience that performs its task with rigour and commitment.

12. As soon as it becomes clear that it is not possible to realise a restructuring plan in accordance with this section, the plan expert informs the court and requests the withdrawal of its appointment.
13. The appointment ends automatically as soon as the court confirms the restructuring plan in accordance with Article 384, unless the court determines in its confirmation decision that it will continue for a period as determined by the court. In addition, the court may at any time dismiss a plan expert, after having heard it or duly summoned it, and replace it with another expert, all of this at its own request, or of one or more creditors, or ex officio.
14. If the court has not yet handed down a decision under this section and has jurisdiction under the regulation as referred to in Article 5(3), the appointment specifies whether it concerns main insolvency proceedings or territorial insolvency proceedings within the meaning of the regulation. Any creditor that has not already been given the opportunity to express its opinion on the basis of the fifth paragraph may object to this on the grounds of lack of international jurisdiction as referred to in Article 5(1) of the said regulation during eight days after the notification as referred to in Article 370(4).

## Article 372

1. A restructuring plan as referred to in Article 370(1), may also provide for the amendment of creditors' rights against legal entities who, together with the debtor, form a group as referred to in Article 24b of Book 2 of the Civil Code, provided that:
  - (a) the rights of such creditors towards the legal persons concerned are intended to satisfy or to secure the performance of obligations of the debtor or of obligations for which those legal persons are liable with or in addition to the debtor;
  - (b) the legal entities concerned are in the situation as referred to in Article 370(1);
  - (c) the legal entities concerned have agreed to the proposed amendment, or the restructuring plan is offered by a plan expert as referred to in Article 371, and
  - (d) the court would have jurisdiction if these legal entities would themselves offer a restructuring plan under this section and submit a request as referred to in Article 383(1).
2. In the event of a restructuring plan as referred to in paragraph 1:
  - (a) the debtor, or the plan expert, as referred to in Article 371, also provides the information as referred to in Article 375 in respect of the legal persons as referred to in paragraph 1, and
  - (b) when hearing the request for court confirmation, the court will, either ex officio or on request, assess if the restructuring plan in respect of these legal persons complies with Article 384.

3. The debtor or the plan expert, if appointed, have exclusive jurisdiction to file requests with the court as referred to in Articles 376(1), 378(1), 379(1) and 383(1) for the benefit of the legal entities as referred to in paragraph 1.

### **Article 373**

1. If the debtor is in a situation as referred to in Article 370(1), the debtor or the plan expert, if appointed, may present a proposal to a party with whom the debtor has concluded an agreement to amend or terminate that agreement. If the other party does not accept the proposal, the debtor or the plan expert may terminate the agreement early, provided that a restructuring plan has been offered and is confirmed by the court in accordance with Article 384 and the court thereby gives its consent for this unilateral termination. In this case, the termination will take place automatically on the day on which the restructuring plan is confirmed by the court subject to a notice period set by the debtor or the plan expert. If the court does not find this notice period reasonable, it may set a longer period when granting the consent, on the understanding that a period of three months as of the court confirmation of the restructuring plan is sufficient in any case.
2. After the unilateral termination as referred to in the first paragraph, the other party is entitled to compensation for the damage it suffers as a result of the termination of the agreement. Section 10 of Title 1 of Book 6 of the Civil Code applies. The restructuring plan as referred to in Article 370(1), may provide for an amendment of the future right to compensation.
3. The preparation and offering of a restructuring plan as referred to in Article 370(1), and the appointment of a plan expert as referred to in Article 371, as well as events and actions directly related to this or to the execution of the restructuring plan and reasonably necessary for that purpose, do not constitute grounds for amendment of obligations or undertakings towards the debtor, for the suspension of any obligation towards the debtor and for termination of an agreement concluded with the debtor.
4. If a stay has been ordered in accordance with Article 376, during that period, any default by the debtor that has occurred prior to the stay does not constitute grounds for the amendment of any commitment or obligation in respect to the debtor, for the suspension of the performance of any commitment in respect of the debtor, or for the termination of any contract concluded with the debtor to the extent that security has been provided for the performance of new obligations arising during the stay.

### **Article 374**

1. Creditors and shareholders are allocated to different classes if the rights they would have in the event of liquidation of the debtor's assets in bankruptcy or the rights they are offered on the basis of the restructuring plan are so different that there is no comparable position. In any event, creditors or shareholders who, in accordance with Title 10 of Book 3 of the Civil Code, another law, or a set of rules or agreement based thereon rank differently in relation to the recovery of the debtor's assets, are allocated to different classes.



2. Unsecured creditors will be grouped together to one or more separate classes, if:
  - (a) they are, at the time of the restructuring plan, put to vote in accordance with Article 381, a legal entity as referred to in Article 395a and 396 of Book 2 of the Civil Code, or a creditor who employs 50 or fewer persons at that time, or an extract pursuant to the Trade Register Act (*Handelsregisterwet*) 2007 shows there are 50 or fewer employees, and they claim payment for the supply of goods or services or based on tort as referred to in Article 162 of Book 6 of the Civil Code, and
  - (b) these creditors will receive, pursuant to the restructuring plan, a payment of less than 20% of their claims or another right representing a value less than 20% of the amount of their claims.
3. Secured creditors with priority arising from pledge or mortgage as provided in Article 278, first paragraph, of Book 3 of the Civil Code, will be allocated to one or more classes with creditors with such priority to the extent their claims have been secured, unless this will not result in another outcome of the distribution of the value realised by the restructuring plan. These creditors will be allocated to the class of unsecured creditors for the remainder of their claims. The determination of the secured part of the claim is based on the liquidation value of the collateral in accordance with the statutory ranking in bankruptcy.

## Article 375

1. The restructuring plan contains all information necessary for creditors and shareholders eligible to vote to form an informed opinion on the restructuring plan before the vote, as referred to in Article 381, takes place, including:
  - (a) the name of the debtor;
  - (b) to the extent applicable, the name of the plan expert;
  - (c) to the extent applicable, the class allocation and criteria according to which creditors and shareholders are allocated to one or more classes;
  - (d) the financial consequences of the restructuring plan per class of creditors and shareholders;
  - (e) the value that is expected to be realised when the restructuring plan is concluded;
  - (f) the proceeds expected to be realised in the event of liquidation of the assets of the debtor in bankruptcy;
  - (g) the principles and assumptions used in calculating the values as referred to under e and f;
  - (h) if the restructuring plan involves an allocation of rights to creditors and shareholders: the moment or moments at which the rights will be allocated;

- (i) to the extent applicable, the new financing the debtor wishes to attract as part of the implementation of the restructuring plan and the reasons therefor;
- (j) the way in which creditors and shareholders can obtain further information on the restructuring plan;
- (k) the procedure for voting on the restructuring plan and when the vote will take place or when a vote must be cast at the latest; and
- (l) to the extent applicable, the way in which the works council or employee representative body established at the debtor's business in accordance with Article 25 of the Works Council Act has been or will be asked to issue advice.

2. To the restructuring plan will be annexed:

- (a) a properly documented statement of all income and expenditure; and (b) a list on which:
  - (i) the creditors and shareholders eligible to vote are stated or, if this is not possible, the creditors or shareholders are stated through reference to one or more categories;
  - (ii) the amount of their claim or the nominal amount of their share is reported, and on which, where applicable, the extent to which that amount is contested and the amount for which the creditor or shareholder will be authorised to vote, are stated, and
  - (iii) the class or classes to which they are allocated are stated.
- (c) to the extent applicable, an indication of creditors or shareholders who are not included in the restructuring plan, by name or, if this is not possible, by reference to one or more categories, as well as 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:
  - (i) the nature, extent and cause of the financial problems;
  - (ii) the efforts made to resolve these problems;
  - (iii) the restructuring measures that are part of the restructuring plan;
  - (iv) the way in which these measures contribute to a solution, and
  - (v) how much time it will likely take to implement these measures;
- (f) to the extent applicable, a written declaration stating the existence of a compelling reason why unsecured creditors, as referred to in Article 374, second paragraph, will receive, pursuant to the restructuring plan, a payment of

less than 20% of their claim or another right representing a value less than 20% of the amount of their claim.

3. By or pursuant to a governmental decree, it may be determined which further information will be included in the restructuring plan or in the annexed documents and in what manner this information is provided, and a standard form may be provided.

## Article 376

1. If the debtor has filed a statement as referred to in Article 370(3) with the court registry and has offered or undertakes to offer a restructuring plan as referred to in the first paragraph of that Article within a period of no more than two months, or a plan expert has been appointed by the court in accordance with Article 371, the debtor or the plan expert may request the court to order a stay.
2. During the stay, which does not exceed a period of four months:
  - (a) any power of third parties to recover the debtor's assets or to claim assets under the debtor's control may be exercised only with authorisation of the court, provided that those third parties have been informed about the order of the stay or are aware of the fact that a restructuring plan is being prepared;
  - (b) the court may lift attachments at the request of the debtor or the plan expert if appointed; and
  - (c) the hearing of a request to grant a suspension of payments or a bankruptcy petition will be suspended.
3. Article 371(2) first, second and fifth sentences, apply mutatis mutandis.
4. The request as referred to in paragraph 1 is granted if it summarily appears that:
  - (a) this is necessary for the continuation of the debtor's business during the preparation and negotiation of the restructuring plan, and
  - (b) at the time the stay is ordered, it may reasonably be assumed to serve the interests of the joint creditors of the debtor and not to substantially harm the interests of the third parties, attaching party and creditor who filed the bankruptcy petition as referred to in paragraph 2.
5. If the debtor or the plan expert, if appointed, requests this before the maximum period of the stay, as referred to in paragraph 2, has expired, the court may extend the period for a term to be determined by it, provided that the total period, including extensions, may not exceed eight months. In its request, the debtor or the plan expert has to argue convincingly that important progress has been made with regard to the creation of the restructuring plan. This is deemed to be the case in any event if a request for court confirmation of the restructuring plan, as referred to in Article 383(1), has been filed.
6. Notwithstanding paragraph 5, the stay will be not extended if:

- (a) the stay has been requested in relation to a non-public procedure outside bankruptcy, and
  - (b) the debtor's centre of main interest, as referred to in Article 3(1) of the regulation as referred to in Article 5(3), has been moved from another member state within three months prior to the moment the court has handed down a decision on the basis of this section for the first time.
7. In the event that the debtor has established a pledge on a registered claim or on the usufruct of such a claim in accordance with Article 239(1) of Book 3 of the Civil Code, the pledgee is not entitled, during the stay, to give notice as referred to in the third paragraph of that Article, or to receive payments or to set off payments against a claim against the debtor, provided that the debtor provides sufficient substitute security for the pledgee's recourse under that pledge.
  8. Articles 241a(2) and (3), 241c and 241d apply mutatis mutandis, on the understanding that the corresponding request of Article 241a(3) concerns a period of time set for the debtor.
  9. At the request of the third parties, attaching party and creditor who filed the bankruptcy petition as referred to in paragraph 2, the court may, in its decision to order a stay or during the period in which it applies, make provisions as referred to in Article 379. Alongside the order of a general stay, the court may appoint an observer as referred to in Article 380, if it deems this necessary to safeguard the interests of the creditors or shareholders.
  10. If the first and fourth paragraphs are no longer complied with, the court will terminate the stay. It may do so ex officio or at the request of the debtor, the plan expert if appointed, or the third parties, attaching party and creditor who filed the bankruptcy petition as referred to in paragraph 2.
  11. The court does not decide on an authorisation as referred to in paragraph 2(a), or requests as referred to in paragraphs 5, 9 and 10 until after it has given the debtor or the plan expert, if appointed, the observer, as referred to in Article 380, if appointed, as well as the third parties, attaching party and creditor who filed the bankruptcy petition as referred to in paragraph 2, the opportunity to express their opinions in a manner and within a period to be determined by the court.
  12. Article 371(14) applies mutatis mutandis.
  13. The request to grant a suspension of payments and the bankruptcy petition as referred to in paragraph 2(c) are terminated by operation of law as soon as the court confirms a restructuring plan in accordance with Article 384. If the creditor was not aware of the fact that a restructuring plan was being prepared at the time it filed the bankruptcy petition, the court will decide if the debtor has to reimburse the expenses the creditor incurred.

## **Article 377**

1. A debtor who, before the stay as referred to in Article 376 was ordered, had the power to use, consume or dispose of property or to collect claims, continues to have

this power during the stay, to the extent that this is in keeping with the normal continuation of the business it is running.

2. The debtor will make use of the power as referred to in paragraph 1 only if the interests of the third parties concerned are sufficiently safeguarded.
3. The court will revoke the power as referred to in paragraph 1 or limit the use of this power at the request of one or more third parties concerned, if the previous paragraph is no longer complied with. The court will decide on this only after it has given the third parties mentioned, the debtor, the plan expert, as referred to in Article 371, if appointed, and the observer, as referred to in Article 380, if appointed, the opportunity to express an opinion in a manner and within a period to be determined by the court.

## Article 378

1. Before the restructuring plan is submitted to the vote in accordance with Article 381(1), the debtor or the plan expert, as referred to in Article 371, if appointed, may request the court to rule on aspects that are relevant in the context of realisation of a restructuring plan in accordance with this section, including:
  - (a) the content of the information contained in the restructuring plan or in the annexed documents, as well as the values and principles and assumptions used by the debtor, as referred to in Article 375(1) subsections e through g;
  - (b) the class allocation;
  - (c) the admission to the vote of a creditor or shareholder;
  - (d) the voting procedure and within which period after the restructuring plan has been submitted to the creditors and shareholders eligible to vote, or they have been informed how they can take note of it, the vote may reasonably take place;
  - (e) if, in case all classes approve the restructuring plan, a ground for refusal as referred to in Article 384, paragraphs 2 and 3, would still prevent the court confirmation of the restructuring plan;
  - (f) if, in case not all classes approve the restructuring plan, a ground for refusal as referred to in Article 384, paragraphs 2, 3 and 4, would prevent the court confirmation of the restructuring plan, and
  - (g) if, in case the debtor is a legal entity as referred to in Article 381(2) and 383(2), the the management board refuses without good reason to give its consent for the submission of a restructuring plan to a vote or for the filing for court confirmation.
2. Article 371(2) first, second and fifth sentences, applies mutatis mutandis.
3. The court, as far as possible, hears the requests made to it in accordance with paragraph 1 jointly and, as far as possible, settles them in one hearing.

4. If the court is requested in accordance with the first paragraph to assess the admission of a creditor or shareholder to the vote or the amount of the claim of a creditor eligible to vote or the nominal amount of the share of a shareholder eligible to vote, the court determines if, and up to which amount, that creditor or shareholder will be admitted to the vote on the restructuring plan. Article 147 applies mutatis mutandis.
5. If the court is requested in accordance with the first paragraph, part (g), to give an opinion on the management board's refusal to give the consent as referred to, and it concludes that the management board does not have good reason to do so, the court may determine, at the plan expert's request, that its decision will have the same effect as the management board's consent.
6. If it considers it necessary in the context of a decision to be handed down by it, the court may appoint one or more experts to carry out an investigation, and to issue a reasoned report of their findings within a period to be determined by the court, which will be extended if necessary. The experts will submit their report to the court registry for inspection by the creditors and shareholders eligible to vote. Article 371(7) and (8) apply mutatis mutandis. The court may at any time dismiss an expert, after hearing him or duly summoning him, and replace him with another expert, either at his own request or ex officio.
7. If information is lacking in order to hand down the requested decision, the court may allow the debtor or the plan expert a reasonable period of time to provide the missing information before handing down a decision as referred to in paragraphs 1 and 4.
8. The court does not decide as referred to in the first and fourth paragraphs until after it has given the debtor, the plan expert, if appointed, the observer, as referred to in Article 380, if appointed, and the creditors and shareholders whose interests are directly affected by the decision, the opportunity to express an opinion in a manner and within a period to be determined by the court. If the court is requested to hand down a decision as referred to in the fourth paragraph, the previous sentence applies in any case to the creditor or shareholder as referred to in that paragraph.
9. Decisions of the court under this article are only binding on those creditors and shareholders who have been given the opportunity by the court to express an opinion under the previous paragraph.
10. Article 371(14) applies mutatis mutandis.

## **Article 379**

1. If the debtor has filed a statement with the court registry as referred to in Article 370(3), or a plan expert has been appointed by the court in accordance with Article 371, the court may, at the request of the debtor or the plan expert or ex officio, take such measures and apply 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 fourteenth paragraph, apply mutatis mutandis.

## Article 380

1. If the restructuring plan is prepared by the debtor in accordance with Article 370, a provision as referred to in Article 379 may be the appointment of an observer. Its task is to supervise the realisation of the restructuring plan and, in so doing, to take into account the interests of all creditors.
2. As soon as it becomes apparent that the debtor will not succeed in the realisation of a restructuring plan in accordance with this section or that the interests of the joint creditors will be adversely affected, the observer will inform the court accordingly. In that case, the court will give the observer and the debtor the opportunity to express their opinions in a manner and within a period to be determined by the court, and attaches the consequences thereto as it considers advisable. Such an inference may be that the court appoints a plan expert as referred to in Article 371.
3. If, after the appointment of the observer, a request for the appointment of a plan expert as referred to in Article 371 is filed and the court grants the request, it withdraws the appointment of the observer.
4. Article 371(2), first, second and fifth sentence, and paragraph 5 to 14, apply mutatis mutandis.

## Article 381

1. The debtor or the plan expert, as referred to in Article 371, if appointed, will submit the restructuring plan to the creditors and shareholders eligible to vote or inform them how they can take note of it for a reasonable period, in any event no less than eight days before the vote takes place, so that they can form an informed opinion on it.
2. The plan expert may only present a restructuring plan to the creditors and shareholders eligible to vote with consent of the debtor if:
  - (a) the plan expert has been appointed at the request of one or more creditors or of the works council or employee representative body established at the debtor's business, and
  - (b) the debtor or, if the debtor is a legal entity, the group, as referred to in Article 24b of Book 2 of the Civil Code, of which the debtor is part, runs a business that employs less than 250 people and whose annual turnover in the previous financial year did not exceed EUR 50 million or whose balance sheet total at the end of the previous financial year did not exceed EUR 43 million.

If the debtor is a legal entity, the shareholders may not prevent the management board in an unreasonable way from giving its consent.

3. All creditors and shareholders whose rights are amended on the basis of the restructuring plan are eligible to vote.

4. If the debtor or the plan expert offers a restructuring plan that also affects rights of claim in respect of which the economic interest lies wholly or predominantly with a person other than the creditor, and as a result of which that other person is in a position that, given the circumstances of the case, can reasonably be considered equal to that of a creditor as referred to in paragraph 3, the debtor or the plan expert may invite that other person instead of the creditor to vote on the restructuring plan at his own discretion. In that case, the provisions of this section which apply to the creditor, apply to the other person.
5. If the debtor or the plan expert offers a restructuring plan that also affects shares for which depositary receipts have been issued, the debtor or the plan expert may invite the depositary receipt holder instead of the shareholder to vote on the restructuring plan at his own discretion. In that case, the provisions of this section which apply to the shareholder, apply to the depositary receipt holders. The same applies to usufructuaries.
6. Voting on the restructuring plan takes place per class of creditors or shareholders, in accordance with the information provided in Article 375(1)(k), at a meeting held physically or by electronic means of communication or in writing.
7. A class of creditors approves the restructuring plan if the resolution to approve has been adopted by a group of creditors together representing at least two-thirds of the total amount of claims belonging to the creditors who have cast a vote in that class.
8. A class of shareholders approves the restructuring plan if the resolution to approve has been adopted by a group of shareholders together representing at least two-thirds of the total amount of issued capital belonging to the shareholders who have cast a vote in that class.

## **Article 382**

1. The debtor or the plan expert, as referred to in Article 371(1), if appointed, draws up a report as soon as possible and at the latest within seven days after the vote, stating:
  - (a) the names of the creditors and shareholders or, if this is not possible, a reference to one or more categories of creditors and shareholders who have cast a vote and whether they have voted in favour or against the restructuring plan, as well as 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 plan expert intends to submit a request as referred to in Article 383(1), and if so, what else has taken place around the vote or, if applicable, at the meeting at which it took place and is relevant in the context of that request.
2. The debtor or the plan expert will give the creditors and shareholders eligible to vote an opportunity to examine the report without delay. If the debtor or the plan expert makes a request as referred to in Article 383(1), it will file the report with the court



registry. The report will be available there for inspection free of charge by the creditors and shareholders eligible to vote until the court has decided on the request as referred to in Article 383(1).

§ 3 *The court confirmation of the restructuring plan*

**Article 383**

1. If at least one class of creditors has approved the restructuring plan, the debtor or the plan expert, as referred to in Article 371, if appointed, may request the court in writing to confirm the restructuring plan. If the restructuring plan includes an amendment of the rights of creditors with a claim that is expected to be wholly or at least partly satisfied in the event of liquidation of the assets of the debtor in bankruptcy, that one class, as referred to in the preceding sentence, consists of creditors allocated to this class.
2. The plan expert may only file a request for court confirmation with consent of the debtor if:
  - (a) the plan expert has been appointed at the request of one or more creditors or of the works council or employee representative body established at the debtor's business;
  - (b) not all classes have approved the restructuring plan, and
  - (c) the debtor or, if the debtor is a legal entity, the group, as referred to in Article 24b of Book 2 of the Civil Code, of which the debtor is part, runs a business that employs less than 250 people and whose annual turnover in the previous financial year did not exceed EUR 50 million or whose balance sheet total at the end of the previous financial year did not exceed EUR 43 million.

If the debtor is a legal entity, the shareholders may not prevent the management board in an unreasonable way from giving its consent.

3. Article 371(2) first, second and fifth sentences, apply *mutatis mutandis*.
4. The court sets, in a decision, as soon as possible the hearing at which it will assess the court confirmation. If the debtor has filed a request for court confirmation of a restructuring plan that has not been approved by all classes and the court has not yet appointed a plan expert as referred to in Article 371 or an observer as referred to in Article 380, then the court will appoint an observer in its decision.
5. The debtor or the plan expert will immediately notify the creditors and shareholders eligible to vote of the decision, as referred to in paragraph 4, in writing.
6. The hearing is held at least eight and no more than fourteen days after the request for court confirmation has been filed and the report as referred to in Article 382 have been made available for inspection at the court registry.

7. If the debtor or the plan expert wishes to use the option of unilaterally terminating an agreement in accordance with Article 373(1), the request for court confirmation also includes a request for authorisation of such termination.
8. Until the day of the hearing as referred to in the fourth paragraph, creditors and shareholders eligible to vote may submit a reasoned written request to the court to refuse the request for court confirmation. Until that moment, the other party to the agreement, as referred to in the previous paragraph, may also submit a reasoned written request to refuse the request to grant authorisation for the termination, as referred to in that paragraph.
9. A creditor, shareholder or other party as referred to in the previous paragraph may not invoke a ground for refusal if it has not protested to the debtor or the plan expert if appointed in this respect within a reasonable time after it has discovered or ought to reasonably have discovered the possible existence of this ground for refusal.

#### **Article 384**

1. If the court has jurisdiction to hear the request for court confirmation of the restructuring plan, it hands down its reasoned decision as soon as possible, granting the request and, if applicable, a request for authorisation to terminate an agreement as referred to in Article 383(7), unless one of the grounds for refusal as referred to in paragraphs 2 to 5 apply.
2. The court refuses a request for court confirmation of the restructuring plan if:
  - (a) the situation as referred to in Article 370(1) does not exist;
  - (b) the debtor or the plan expert has not complied with the obligations as referred to in Articles 381(1) and 383(5) in respect of all creditors and shareholders eligible to vote, unless the creditors and shareholders concerned declare their approval of the restructuring plan;
  - (c) the restructuring plan or the annexed documents do not contain the information prescribed by Article 375, the class allocation does not meet the requirements of Article 374 or the voting procedure did not meet the requirements of Article 381, unless such a shortcoming could not reasonably have led to a different outcome of the vote;
  - (d) a creditor or shareholder should have been admitted to the vote on the restructuring plan for another amount, unless that decision could not have led to a different outcome of the vote;
  - (e) the performance of the restructuring plan is not sufficiently guaranteed;
  - (f) the debtor wishes to attract new financing as part of the implementation of the restructuring plan and this is substantially detrimental to the interests of the joint creditors;

- (g) the restructuring plan was concluded by deceit, by favouring one or more creditors or shareholders eligible to vote or by other unfair means, irrespective of whether the debtor or another person cooperated to that end;
  - (h) the wages and disbursements of the plan expert, expert or observer appointed by the court pursuant to Articles 371, 378(6) and 380 respectively have not been paid or no security has been provided for them; or
  - (i) there are other reasons that oppose court confirmation.
3. At the request of one or more creditors or shareholders eligible to vote, who did not themselves approve the restructuring plan or whose admittance to the vote was wrongly refused, the court may refuse a request for court confirmation of a restructuring plan, if it summarily appears that those creditors or shareholders are worse off than in the event of liquidation of the assets of the debtor in bankruptcy.
4. At the request of one or more creditors or shareholders eligible to vote, who did not themselves approve the restructuring plan and were allocated to a class which did not approve the restructuring plan or whose admittance to the vote was wrongfully refused and who should have been allocated to a class which did not approve the restructuring plan, the court will refuse a request for court confirmation of a restructuring plan which was not approved by all classes, if:
- (a) the distribution of the value realised with the restructuring plan, to a class of creditors as referred to in Article 374, second paragraph, consists of a payment of less than 20% of the amount of their claims or another right representing a value less than 20% of the amount of their claims, unless it has been demonstrated that there is a compelling reason for this.
  - (b) the distribution of the value realised with the restructuring plan deviates from the ranking in the case of recourse against the debtor's assets in accordance with Title 10 of Book 3 of the Civil Code, another law, or a set of rules or agreement based thereon, to the detriment of the class that did not approve unless there are reasonable grounds for such deviation and the creditors or shareholders concerned are not harmed in their interests as a result;
  - (c) on the basis of the restructuring plan, the creditors as referred to above, other than the creditors as referred to in part (d), are not entitled to opt for a cash payment equal to the amount that they would be expected to receive in cash in the event of liquidation of the debtor's assets in bankruptcy; or
  - (d) secured creditors with priority arising from pledge or mortgage as provided in Article 278, first paragraph, of Book 3 of the Civil Code who financed the debtor in the conduct of their business and who will receive an amendment of rights, shares or depositary receipts pursuant to the restructuring plan, without the possibility to choose another form of distribution.
5. At the request of the other party to the agreement, the court refuses the request for authorisation to terminate an agreement, as referred to in Article 383(7) on the ground as referred to in paragraph 2, under a.
6. Article 378(6) applies mutatis mutandis.

7. The court will not decide as referred to in the first paragraph until after it has given the debtor, the plan expert, if appointed, the observer, as referred to in Article 380, if appointed, and the creditors or shareholders eligible to vote, or the other party if they have submitted a request to refuse the request for court confirmation of the restructuring plan or to grant authorisation to terminate the agreement as referred to in Article 383(8), the opportunity to express their opinions in a manner to be determined by the court.
8. Article 371(14) applies mutatis mutandis.

§ 4 *The consequences of court confirmation of the restructuring plan*

### **Article 385**

The court confirmed restructuring plan is binding for the debtor and for all creditors and shareholders eligible to vote. If someone other than the creditor or shareholder has voted on the restructuring plan pursuant to Article 381, paragraph 4 or 5, the restructuring plan is nevertheless binding for the creditor or shareholder.

### **Article 386**

For the benefit of creditors eligible to vote, who have claims that were not contested by the debtor, the decision of court confirmation provides an enforceable title against the debtor and against the persons who have acceded to the restructuring plan as guarantors, to the extent the creditors receive a right to claim cash payment pursuant to the restructuring plan.

### **Article 387**

1. The debtor will be in default in the event of any failure to comply with the restructuring plan and will be obliged to compensate the damages suffered by creditors or shareholders eligible to vote as a result, unless the failure cannot be attributed to him. Article 75 and Section 10 of Title 1 of Book 6 of the Civil Code apply mutatis mutandis.
2. In the restructuring plan, the dissolution of the restructuring plan can be excluded. If the restructuring plan does not contain any stipulation thereto, Article 165 applies mutatis mutandis.

## G

At the end of Article 362(2), the words 'with the exception of Articles 262 and 269 of that Code insofar as it concerns requests filed on the basis of the second Section of Title IV in the context of a non-public procedure outside bankruptcy or a public procedure outside bankruptcy' are added.

## Article II

A new Article 19a is inserted in the Civil Courts (Registrar's Rights) Act, reading:

### Article 19a

1. For the filing 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 petitioner's court registry fee will be levied at the court for cases other than cantonal cases with respect to a request of indeterminate value on the basis of the table attached to this Act.
2. For the filing of a request for court confirmation of a restructuring plan as referred to in Article 383(1) of the Bankruptcy Act, the court registry fee of the petitioner will be levied at the court for other matters than cantonal matters with respect to a claim, or a request with an amount of more than € 100,000 on the basis of the table attached to this Act.
3. For the filing of a request to refuse a request for court confirmation of a restructuring plan as referred to in Article 383(8) of the Bankruptcy Act, the court registry fee of the creditor or shareholder eligible to vote will be levied at the court for other matters than cantonal matters on the basis of the table attached to this Act. The court registry fee will be determined based on the amount of their claim or the nominal amount of their share.
4. In applying the first and second paragraphs, if the request is filed by a plan expert, the court registry fee will be levied of the debtor.

### Article IIA

The Minister for Legal Protection will submit a report about the effectiveness and the practical effects of this Act to the States General within three years after implementation of this Act.

### **Article III**

This Act will be implemented at a time to be determined by Royal Decree, which may differ for the different articles or parts of the act.

### **Article IV**

This law will be cited as: Act on Court confirmation of extrajudicial restructuring plans.

Order and command that it be published in the Bulletin of Acts and Decrees and that all ministries, authorities, colleges and officials concerned will ensure its accurate implementation.

The Minister for Legal Protection