The Netherlands:
The legislative programme 'Recalibration of Bankruptcy Law'

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In November 2012 the Dutch legislator launched the legislative programme 'Recalibration of Bankruptcy Law'.

This legislative programme steadily makes progress and is based on three pillars: (i) enhancing the possibilities for corporate restructuring, (ii) modernisation of the bankruptcy procedure and (iii) combating bankruptcy fraud.

The first two pillars of the legislative program

The first pillar – to strengthen the possibilities for corporate restructuring – *inter alia* contains draft bills on the introduction of a statutory base to the practice of pre-packs and on the introduction of a compulsory debt restructuring composition (outside bankruptcy). The second pillar – the modernisation of the bankruptcy procedure – contains a draft bill that entails several amendments to the current Dutch bankruptcy procedure, e.g. the use of electronic means of communication will be implemented and a deadline will be introduced for creditors to file their claims.

The third pillar of the legislative program

The third pillar of the legislative program – the combating of bankruptcy fraud – is nearly completed. This pillar contains three bills, of which two have entered into force on 1 July 2016: the bill on director disqualification under civil law (*de Wet civielrechtelijk bestuursverbod*) and the bill on the revision of the criminalisation of bankruptcy fraud (*de Wet herziening strafbaarstelling faillissementsfraude*). The third (draft) bill under this pillar, the bill on the strengthening of the position of the bankruptcy trustee (Wet versterking positie curator), has been adopted by the Dutch Upper House on 21 March 2017. It is expected that this bill will enter into force soon, possibly as per 1 July 2017.

The strengthened position of the bankruptcy trustee

In what way is the position of the bankruptcy trustee strengthened? It must be noted that with this bill the bankruptcy trustee gets the statutory duty to investigate whether there have been irregularities that have (partly) caused the bankruptcy, that have complicated the liquidation of the bankrupt estate or that have increased the deficit in the bankruptcy. In essence, the bankruptcy trustee will have the task to identify fraud. In the event that fraud has been identified, the bankruptcy trustee shall inform the supervisory judge privately and may – after liaison with the supervisory judge – notify or report this to the competent authorities. Also, the bankruptcy trustee has to mention this in the liquidation report.

Furthermore, the position of the bankruptcy trustee is strengthened through the expansion of the obligations of the bankrupt to provide information to and to cooperate with the bankruptcy trustee. This means that the bankruptcy trustee must be informed by the bankrupt of all facts and circumstances that are relevant for the bankruptcy, whether or not this has been asked. Also, the bankruptcy trustee must be informed about foreign assets, such as real estate and bank accounts in foreign countries. The bankrupt must also thereto cooperate in full with the bankruptcy trustee. When a legal person, a commercial partnership or a limited partnership is declared bankrupt, such obligations also apply to (indirect) directors, supervisory directors, partners and *de facto* directors as well as to persons that have had these positions in a period of three years prior to the bankruptcy. The bankrupt also needs to directly provide his or her records and to make these records legible through encryption keys. Likewise, all professional third parties that keep (part of) the records of the bankrupt, such as accountants, will have the obligation to provide these records to the bankruptcy trustee together with the means to make the records legible, when asked to do so.

Please note that this bill is applicable on bankruptcy proceedings that have been opened after the bill has entered into force, possibly as per 1 July 2017. ■

> **THE POSITION OF THE BANKRUPTCY TRUSTEE IS STRENGTHENED THROUGH THE EXPANSION OF THE OBLIGATIONS OF THE BANKRUPT**