

Country Reports

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Updates from The Netherlands, Ukraine, Norway, Latvia, Italy



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The Netherlands: Modernisation of the bankruptcy procedure

On 1 January 2019 the Modernisation of Bankruptcy Procedure Act (MBPA) entered into force in the Netherlands. The MBPA brings Dutch bankruptcy law into the 21st century by modernising a number of aspects of the bankruptcy procedure (faillissement).

In particular, the MBPA aims to achieve the following three goals:

- i) increased digitalisation and transparency;
- ii) increasing the speed of the procedure; and
- iii) providing for a more made-to-measure procedure and more specialisation and expertise.

It is expected that the entry into force of the MBPA will lead to a number of important changes in the day-to-day activities for both bankruptcy trustees and creditors in the handling of a bankruptcy in the Netherlands.

First, the MBPA provides for a number of changes that relate to increased digitalisation and transparency of the bankruptcy process. This specifically concerns the abolishment of the requirement that notifications in bankruptcies must be in written form and that all meetings must be in physical form. Rather, with the introduction of the MBPA all

notifications and meetings may take a digital form. This enables, for example, that hearings be held by conference call, that voting on a reorganisation plan be done through a website and that creditors only receive information from the bankruptcy trustee by email. In addition, the MBPA provides for the possibility for orders of the supervisory judge to be made public through the Central Insolvency Register, although it is not yet clear exactly which categories of orders will be published.

A second category of measures aims to increase the speed of the procedure. The most relevant change under this category regards the introduction of a deadline for the filing of claims with the bankruptcy trustee. This date is related to the date of the claims' admission meeting (i.e. the deadline is 14 days prior to the meeting), after which date claims can no longer be filed with the bankruptcy trustee for acknowledgment. There is no hardship clause, so creditors will have to make sure that they file their claim in a timely manner. This also applies to secured creditors who might possibly be undersecured. Another novelty is the introduction of the possibility for the bankruptcy trustee to - until the deadline - admit claims on his own accord. However, it is expected that this possibility will be not be used very often in practice.

Thirdly, the MBPA provides for the possibility to tailor a bankruptcy to the specific circumstances of the individual case and promotes further specialisation and the development of expertise. This category of changes does not only provide for more flexibility in the number of claims' admission meetings that are held (none, one or multiple as opposed to one), but, in particular, also for new rules concerning the creditors' committees. Such committees are especially prevalent in larger bankruptcies, whereby the previous maximum of three members was often felt to be a constraint. The MBPA provides that from now on a creditors' committee can consist of as many members as desirable, as long as the number of members is uneven and represents the most important groups of creditors. Specialisation and the development of expertise are further promoted by allowing that a supervisory judge can appoint an expert - at the costs of the estate - to support the judge in cases that require particular expertise, and that the court can appoint multiple supervisory judges and use the institution of a newly-founded governmental advisory committee on insolvency law.

The MBPA is applicable to bankruptcies opened in the Netherlands on or after 1 January 2019.



THE MBPA PROVIDES FOR A NUMBER OF CHANGES THAT RELATE TO INCREASED DIGITALISATION AND TRANSPARENCY OF THE BANKRUPTCY PROCESS

