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The purpose of directors' duties in the insolvency context

A critical assessment based on empirical data from Austria and the Netherlands

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The purpose of directors' duties in the insolvency context

Austria

- ✓ Duty to restructure derived from the duty of care (specified after implementation of the PRD 2019)
- ✓ Duty to reorganise
- ✓ Duty to file for insolvency
- ✓ Prohibition of payment protecting the *par condicio creditorum*

The Netherlands

- ✓ Duty to take measures to avoid insolvency derived from the general duty of care and the duty to act in the best interest of the company
- ✓ Prohibition to enter into a new obligation
- ✓ Prohibition of payment (to related parties)



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Methodology

Austria

- ✓ Survey
- ✓ 107 insolvency administrators
- ✓ Responses from all 9 states

The Netherlands

- ✓ Survey and document analysis
- ✓ 177 bankruptcy trustees
- ✓ 2134 Dutch Bankruptcy reports



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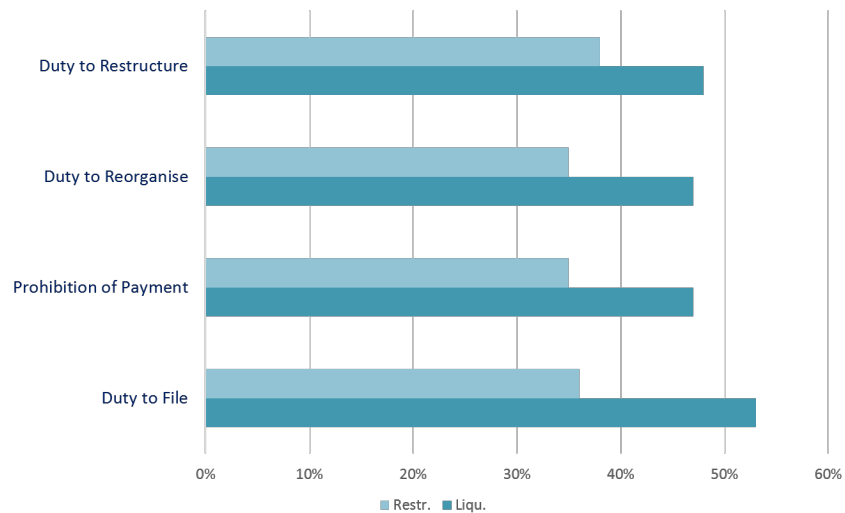
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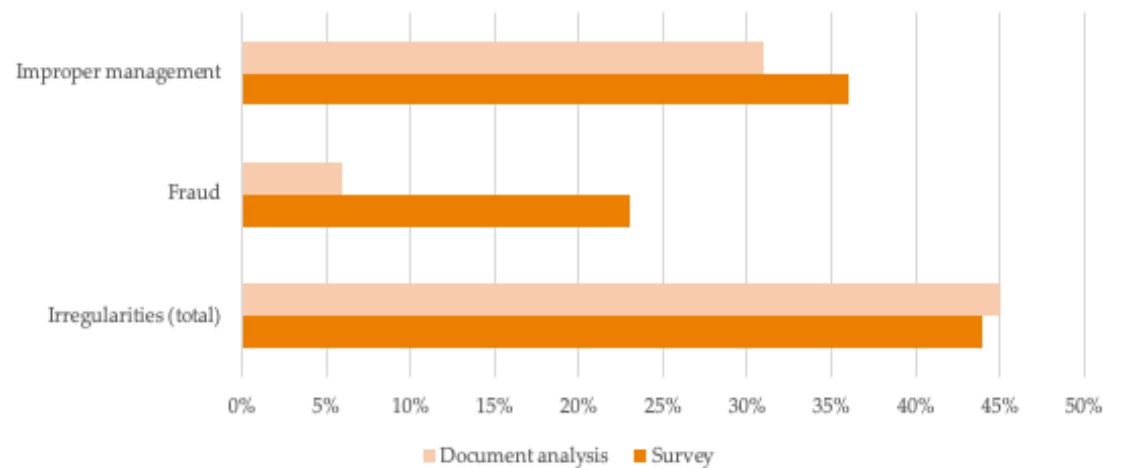


How often are breaches of duties identified?

Austria

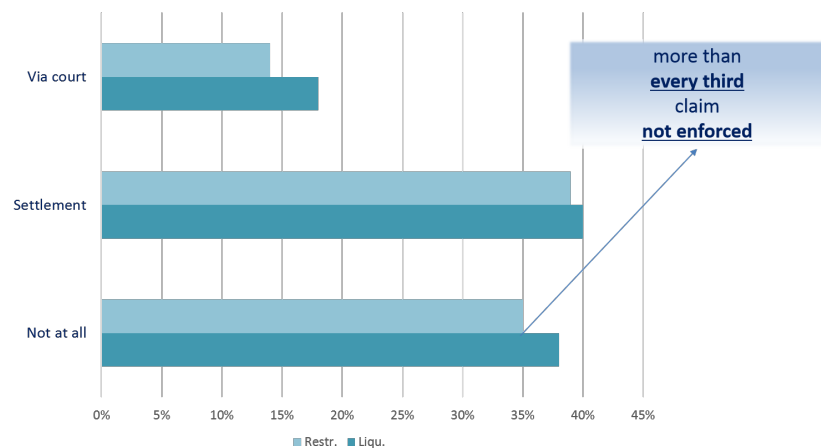


The Netherlands

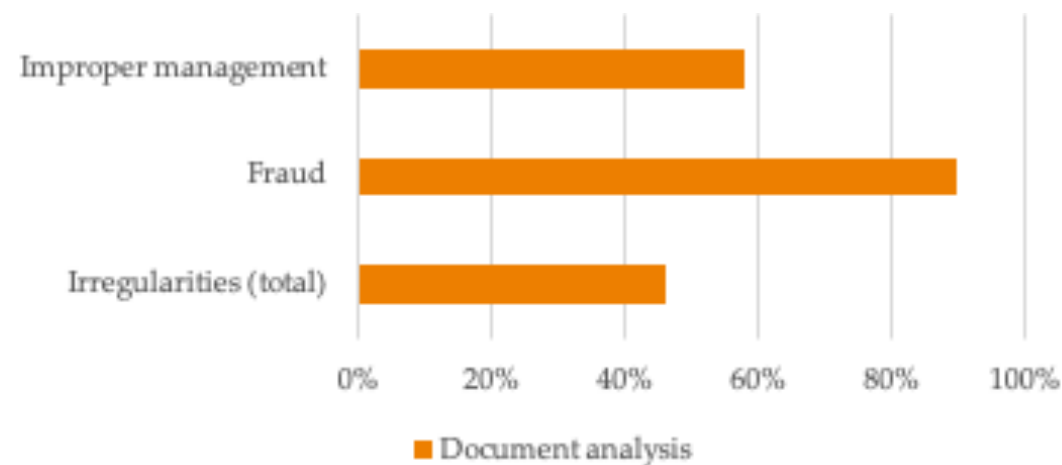


How often are liability claims enforced?

Austria



The Netherlands





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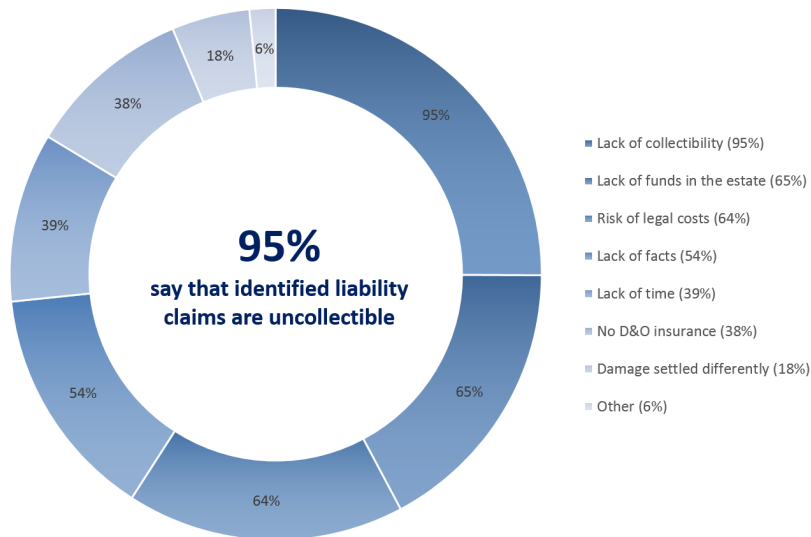
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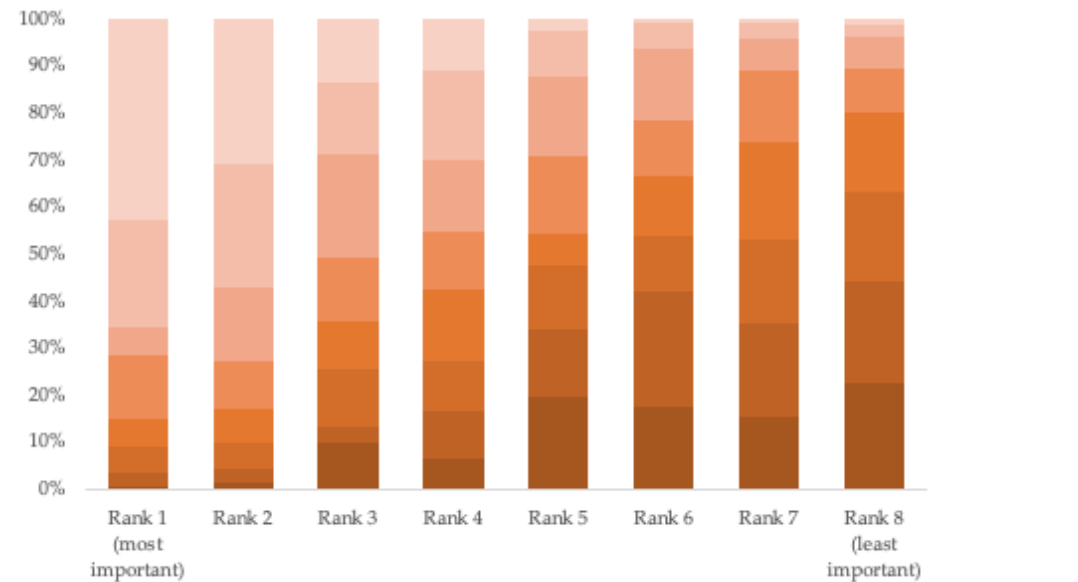


Why are liability claims not enforced

Austria



The Netherlands





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A new perspective on the purpose of directors' duties in the insolvency context





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**We look forward to
the discussion!**



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