

## LEGAL UPDATE

### **Bankruptcy proceedings modernised after 130 years**

Date: 26 June 2018

The world has seen many technological developments in the nearly 130 years that have passed since the introduction of the Bankruptcy Act. However, bankruptcy proceedings have remained virtually unchanged since 1897. In order to implement the necessary modernisations, the Dutch House of Representatives [adopted](#) the Modernisation of Bankruptcy Proceedings Act on Tuesday 26 June 2018. The relevant bill aims to make bankruptcy proceedings more efficient and transparent, so that bankruptcies can be settled more quickly and at lower costs, and proceeds for creditors can be increased. In this Legal Update we list the most important changes.

#### **Setting a bar date**

An important change under the new Act is the introduction of a hard deadline for the filing of claims by creditors. In the new Act, this period is set at no later than fourteen days before the day of the verification meeting, unless the bankruptcy judge decides otherwise. The hard deadline promotes the efficiency of the proceedings: previously, creditors could submit their claims until the bankruptcy judge declared the distribution list binding. This caused unnecessary delays. Under the new Act, a claim is not included in the distribution if a creditor has not submitted it on time.

#### **Digitisation**

The way in which the receiver communicates with the creditors has also changed. Under the new Act, the receiver can notify the creditors by email that they need to submit their claims for verification. Incidentally, other means of electronic communication are not excluded: creditors can also be notified by sending a WhatsApp message, for example. Meetings, including the verification meeting, can now also be held electronically. Digitisation increases flexibility in organising meetings and enables meetings to be organised at lower costs.

Creditors will also be kept informed through the Central Insolvency Register. Bankruptcies and moratoriums on payments will be announced immediately via the Insolvency Register. In addition, decisions of the bankruptcy judge will also be published in the Insolvency Register, so that creditors can take cognisance of them. Timely publication of such documents not only contributes to the transparency of bankruptcy proceedings, but is also important in view of the short appeal period (five days).

The legislator has acknowledged that it will take some time before courts will be able to publish bankruptcy judgments on the same day. For this reason, the legislator has agreed that this part of the bill will enter into force at a later date.

#### **Tailored approach**

The possibilities to offer a tailored approach have been expanded. For example, the obligation to set the date of the verification meeting within fourteen days after the declaration of bankruptcy has been abolished. In practice, this obligation had long been a dead letter, because receivers were often unable to determine within fourteen days whether a payment could be made to the creditors whose claims predated the date of the bankruptcy. Depending on the complexity and size of the bankruptcy, it will also be possible to appoint more than one bankruptcy judge and hold more than one verification meeting.

In addition, receivers will no longer have to ask the bankruptcy judge for permission if they want to sell an asset worth less than 2,000 euros.

## **Specialisation**

Finally, the new Act will facilitate specialisation within the judiciary. The Act makes it possible to appoint several bankruptcy judges in a single bankruptcy, thus enabling the appointment of judges with specific knowledge in certain types of bankruptcies. In addition, the appointment of experts will be made possible, so that bankruptcy judges can be supported in their supervisory tasks.

Thanks to the introduction of the Modernisation of Bankruptcy Proceedings Act, the bankruptcy practice will be able to better utilise technological developments and digital means of communication. Given the increasing complexity of bankruptcies, modernised proceedings are also necessary for a more efficient settlement. The Act will enter into force on 1 January 2019 and represents a major step in the right direction.

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