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[paulnewson@insol-europe.org](mailto:paulnewson@insol-europe.org)

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- INSOL Europe Turnaround Wing
- INSOL Europe Financial Institutions Group
- Eastern European Countries' Committee
- INSOL Europe Anti-Fraud Forum

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# New Draft Bill seeking to introduce Pre-Insolvency Proceedings in The Netherlands

On 5 September 2017, the Dutch government published a new draft bill seeking to introduce pre-insolvency proceedings in the Netherlands, report Michael Veder and Nicolaes Tollenaar of RESOR.

“By way of short summary, the intended procedure will be very similar to the English scheme, with a few notable differences.

Under the proposed bill, both the debtor and, under certain circumstances, a creditor can propose or initiate a restructuring plan. Like the English scheme, the restructuring plan can be implemented outside formal insolvency proceedings. The restructuring plan can bind all types of creditors and shareholders. It need not include all, but can be directed to only a subset of them. The plan can include third party releases.

Unlike the English scheme, neither a convening hearing nor any creditors meetings are required. The vote can take place electronically. A class has accepted the plan if a 2/3 majority in amount has voted in favour (no head count). Following the vote, the court has to confirm the plan for it to become binding for dissenting parties. The procedure features a Chapter 11-style cram down

mechanism, giving the court the power to confirm the plan over the objections of dissenting classes.

The procedure will contain certain flanking measures, such as a stay, the ability to set aside *ipso facto* clauses, the power to terminate onerous contracts and the right for the debtor to request the court to give binding early determinations on matters of dispute such as jurisdiction, class formation or valuation. The entire procedure is confidential until the confirmation decision has been delivered. It is designed to avoid unnecessary court involvement and to be as swift, efficient and flexible as possible.

All in all, we believe that the proposed bill will be a significant step forward and provide an effective and efficient instrument for dealing with both domestic and international restructuring cases.

The draft will be open for consultation on 1 December 2017. Hopefully the bill will be submitted to the parliament shortly after that. If things go smoothly, it could become law within a year.”

The Dutch draft bill can be found at: <https://www.internetconsultatie.nl/>