

## High-level Outline of Dutch Suspension of Payment Proceedings

Suspension of payment proceedings (*surseance van betaling*) are court-supervised reorganization proceedings (as opposed to liquidation type proceedings).

A company can apply for suspension of payment proceedings if it foresees that it will not be able to pay its debts as they fall due.

Suspension of payment proceedings essentially offer the debtor two forms of relief: (i) a temporary stay (moratorium) against unsecured creditors and (ii) the ability to implement a restructuring plan with majority consent of its creditors.

Upon receipt of the petition, the relief is granted immediately on a preliminary basis (*voorlopige surseance van betaling*). The court appoints an administrator and mostly also a supervisory judge. The administrator is usually a lawyer.

In the days or weeks following the commencement of the proceedings the administrator notifies the creditors as to the further process (claims filing and creditors meeting).

The administrator manages the affairs of the company together with existing management (joint administration). The supervisory judge exercises court supervision.

In principle, after a period of approximately 2 – 4 months, the court decides, after having heard the creditors, on the granting of definitive suspension of payment proceedings, unless a creditors meeting for the purpose of voting on a restructuring plan takes place beforehand.

If the company, simultaneously with the application for suspension of payment proceedings, files a restructuring plan, the court can determine that a creditors meeting for voting on the plan will take place before the hearing on the granting of definitive suspension of payment proceedings takes place.

Before the creditors meeting takes place the court sets a date before which the creditors can file their claims for voting purposes. The creditors receive notification of the date for the filing of claims and the creditors meeting.

Creditors can vote at the meeting in person or by proxy. The plan is adopted if a normal (50% + 1) majority of the creditors represented at the meeting votes in favour in number and amount. Creditors do not vote in classes. The plan only binds ordinary unsecured creditors and, accordingly, there is effectively only one class of creditors, the class of ordinary unsecured creditors.

If the requisite majority is not achieved, the court can nevertheless determine that the plan will be deemed to be adopted if 75 % of the creditors have voted in favour and the court finds that dissenting creditors have voted unreasonably.

After the plan has been adopted by the requisite majority of creditors the court has to confirm the plan. A confirmation hearing takes place approximately two weeks following the creditors meeting at which the creditors voted on the plan.

Once the decision confirming the plan becomes irrevocable, the plan becomes binding on all ordinary unsecured creditors, including creditors that did not vote or voted against. The proceedings end upon the plan becoming effective.

The entire process can take up to six months or longer, depending on the circumstances.

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***Disclaimer: this high-level outline has been prepared for general informative purposes only. It is by no means exhaustive and should not be relied on as legal advice to any extent.***

