INSOL INTERNATIONAL

ENVIRONMENTAL CLAIMS AND LIABILITIES IN INSOLVENCY AND RESTRUCTURING

INSOL International, 29-30 Ely Place, London, EC1N 6TD
Tel: +44 (0) 20 7248 3333 Fax: +44 (0) 20 7248 3384

ISBN: 978-1-907764-35-6

CONTENTS

Contributors	iv
President's Introduction	vii
Foreword	viii
Australia	1
Brazil	22
Canada	37
Denmark	69
Finland	88
France	96
Hong Kong	115
India	128
Japan	140
Kenya	151
Mexico	170
Nigeria	183
Norway	200
People's Republic of China	213
Singapore	234
South Africa	242
Spain	278
Sweden	288
The Netherlands	303

CONTENTS

Uganda 324

United States of America 334

Zambia 353

CONTRIBUTORS

Australia	Lionel Meehan Amy Nolan Elizabeth Honey Morgan Hartley-Marschner Joanne Lim Mariam Jaber DLA Piper Australia
Brazil	Vilmar Luiz Graça Gonçalves Leandro Saboia Rinaldi de Carvalho Marcela Hill Roberto Vianna do R. Barros Carina Pereira Cancela Lorena Aparecida Silva Cozer CMA law
Canada	Bruce Darlington Jerritt Pawlyk Kevin Hoy Alexandra McCawley DLA Piper (Canada) LLP
Denmark	Henrik Sjorslev Kristoffer Bjarkov Andersen Peter Knudsen Bjarke Mogensen DLA Piper Denmark
Finland	Nina Aganimov DLA Piper Finland
France	Caroline Texier DLA Piper France
Hong Kong	Trinh Hoang Rosie Li Sapphira Choi DLA Piper Hong Kong Mark Fairbairn Fairbairn & Co.
India	Joseph Jimmy Aniruddha Sen Trilegal

CONTRIBUTORS

Japan	Masahiko Ishida Yuji Shimada Takanobu Morita Jan Zhan DLA Piper, Tokyo
Kenya	James Kamau Judy Muigai Fred Kibagendi DLA Piper Africa, Kenya (IKM Advocates)
Mexico	Diego Martinez Jaime Ancer DLA Piper Mexico, S.C.
Nigeria	Tunde Oyewole Samuel Salako Muyiwa Ogungbenro Olufunke Fawehinmi Similoluwa Adeyemi Abimbola Ifederu Stephanie Agbasi Olajide Oyewole LLP – A member of DLA Piper Africa
Norway	Egil Hatling Maria Krutå Awais Khan Advokatfirma DLA Piper Norway DA
People's Republic of China	Carolyn Dong Tina Xia Simin Yu DLA Piper Hong Kong
Singapore	Joe Bauerschmidt DLA Piper, Singapore
South Africa	Lili Nupen Luca Maraschin Muhammed Khan Minnette Le Roux Nupen Staude De Vries Inc. Nicola Nolan DLA Piper South Africa

CONTRIBUTORS

Spain	José María Gil-Robles Casanueva Borja De Obeso Perez-Victoria José María Barrios Garrido DLA Piper, Madrid
Sweden	Jonas Premfors Anders Svensson Clark DLA Piper, Stockholm
The Netherlands	Marc Molhuysen Wilmy Westerhof Jocelyn van Moergastel Martijn Boeve Yaël Boekhout Arjen de Snoo DLA Piper, Amsterdam
Uganda	Andrew K. Munanura, INSOL Fellow S&L Advocates
United States of America	Rick Chesley Katie Allison DLA Piper, USA
Zambia	Chishimba P. Kachasa Chibesakunda & Co (DLA Piper Africa)

PRESIDENT'S INTRODUCTION

The interaction of environmental protection laws and restructuring and insolvency regimes poses competing policy concerns: the importance of the environment, and the desire to maximise returns for creditors and promote the restructuring of distressed entities.

These policy issues are at the centre of this new publication from INSOL International, "Environmental Claims and Liabilities in Insolvency and Restructuring."

The book consists of contributions from 22 jurisdictions. It explores the key laws and regulations relating to clean-up and remediation responsibilities, carbon emissions, climate risk management and disclosure and personal liability for company officers arising from a breach of environmental duties and responsibilities.

Looking ahead, it will be important for regulators to consider refinements to laws dealing with climate change and environmental matters in an insolvency-specific scenario – to provide greater clarity to financial advisors, insolvency practitioners, creditors and other stakeholders, and to also ensure that the desired environmental goals are met.

INSOL thanks each of the contributors as well as the leader of this project, Rick Chesley and his team of DLA Piper LLP (US), New York, for committing their time, energy and expertise to this publication.

I hope you enjoy reading this excellent resource – an invaluable contribution for INSOL International's members.

Scott Atkins
President & INSOL Fellow
INSOL International

April 2024

FOREWORD

Issues relating to environmental regulation and sustainability have reached a critical point in today's global economy. The mounting concerns regarding global warming and climate change have spurred action in both developed and developing economies. The recently completed UN Climate Change Global Conference laid out an ambitious agenda designed to "accelerate action to tackle the climate crisis through collaboration between governments, businesses and civil society."

Against this backdrop are the relevant insolvency regimes of many countries. Recognising that insolvency often seeks to address a company's liabilities in order to facilitate a restructuring or sale of distressed assets, often legacy environmental claims remain unsatisfied, creating potential further environmental harm.

This publication seeks to provide an overview on these two notionally separate, but fast becoming inter-related, issues of law and policy. Across various jurisdictions, our country contributors have provided some information on the key environmental protection laws and regulations, focusing on clean-up and remediation. In addition, with the increasing emphasis on combating climate change, each jurisdiction has also examined the relevant governance, corporate and financial laws and regulations that impact on environmental regulation. The country reports then explore how environmental issues are addressed in local insolvency regimes – including issues of solvency and the discharge and resolution of environmental claims, and how these issues impact individual liability and insurance coverage.

What is clear from this survey is that these varying jurisdictions have taken a myriad of approaches to these issues. What is also evident, however, is that the insolvency and civil law regimes in these countries are not necessarily equipped to address the mounting challenges created by environmental change. Given the need to meaningfully address legacy environmental issues, the insolvency regimes will likely need to re-focus on better balancing the desire for meaningful environmental change with the mandate of addressing the needs of insolvent companies to address their environmental exposure through formal insolvency proceedings. This will be no easy task. However, it is one that each government throughout the world will need to begin to explore quickly.

The country reports in this publication are only intended to provide insights into the different systems and assist practitioners and policymakers consider these far-ranging issues and hopefully develop modifications to our insolvency regimes that allow the insolvency system to serve its essential purpose, while addressing these mounting environmental challenges. We expect to add further jurisdictions to this review over time, as well as begin to assemble certain recommendations to address these issues.

I would like to thank very much all the authors for putting in a lot of time and effort to prepare excellent reports and share their expertise with the entire INSOL community. Special thanks to Katie Allision and Waheeda Lafir for their tireless contributions to this effort. Finally, once again I want to thank David Burdette for his insights, dedication and dogged determination to see this project through.

Richard Chesley
DLA Piper LLP (US), New York

THE NETHERLANDS

1. What are the relevant environmental protection laws, regulations, treaties or regimes in your jurisdiction, including with respect to:

- **clean-up and remediation;**
- **emissions; and**
- **any minimum standards, or environmental permit system?**

1.1 Introduction

The Netherlands has an extensive set of laws and regulations concerning the environment. In part, these are based on European Union (EU) regulations. These are often binding and can only be deviated from to the extent that stricter national rules can be established. For subjects that are not regulated at European level, the Netherlands has its own legislation.

The Netherlands is in the middle of what the Dutch Minister of Infrastructure and Water Management described as the biggest legislative procedure since 1848. A new Environment and Planning Act will contain almost all national legislation regarding environmental issues. Through the Environment and Planning Act, the aim of the government is to combine and simplify the regulations for spatial projects. Thus, 26 acts (*wetten*) will be replaced by one act, 60 decrees (*besluiten*) will be replaced by four decrees and 75 regulations (*regelingen*) will be replaced by one regulation.

Because of the complexity of the legislative changes, the starting date of the Environmental and Planning Act has been postponed multiple times. The latest timeline shows that the Environmental and Planning Act will enter into force on 1 January 2024. From that date, there will be a transition period until 1 January 2032. During that period, in many situations the old law will still apply or at least still be relevant for the assessment of rights and obligations, and possible liabilities.

1.2 European legislation

Improving environmental quality and human health (that is, among others, protecting ecosystems and biodiversity, improving water supply, and reducing noise pollution) is mainly (politically) driven by the Treaty on the Functioning of the European Union (TFEU)[1] and the body of legislation to be adopted by the member states of the EU (Member States).

The European regulations consist of both minimum standards and regulations on how procedures should be carried out, and how legal protection should be provided. Most EU legislation on environmental issues is laid down in directives. Therefore, Member States have to comply with the standards, but are free to draft national legislation as they see fit. As a result, national legislation will be the most relevant for environmental legislation in the Netherlands.

1.3 Key national legislation

At the time of writing, the legislation in the Netherlands regarding environment subjects consists of dozens of acts (*wetten*), and even more regulations at lower levels of the government. The current acts that focus on the environment will be incorporated into the new Environmental and Planning Act.

Most acts will cover multiple environmental subjects, for example clean up and remediation, emissions and permit systems. We will therefore shortly explain the key environmental protection legislation in the Netherlands, that will be (partly) incorporated into the new Environmental and Planning Act.

[1] Consolidated versions of the Treaty on European Union [2008] OJ C115/13 (TEU); consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 (TFEU).

1.4 General legislation

As mentioned, the Netherlands has enacted significant legislation on environmental subjects. This scheme of environmental laws contains both general laws on the one hand, and sectoral laws on the other. General laws provide procedural provisions for government decision-making and general obligations regardless of the specific environmental subject matter. Sectoral laws contain the obligations related to a specific subject, for example, water, soil and noise. The main general environmental laws in the Netherlands are the Spatial Planning Act (*Wet ruimtelijke ordening*),[2] the Environmental Permitting (General Provisions) Act (*Wet algemene bepalingen omgevingsrecht*)[3] and the Environmental Management Act (*Wet milieubeheer*).[4]

1.4.1 Spatial Planning Act (Wet ruimtelijke ordening)

The Spatial Planning Act provides the spatial planning instruments for national, regional and local governments. It involves establishing policies and regulations that serve as a framework for existing and new developments. For new developments, this Act also contains the basis for cost recovery by the government, which in most cases leads to a private-law payment obligation of the initiator towards the government.

1.4.2 Environmental Permitting (General Provisions) Act (Wet algemene bepalingen omgevingsrecht)

The Environmental Permitting (General Provisions) Act entered into force on 1 October 2010 and is the basis for a large part of the permits in the domain of the physical living environment. The Act contains the licensing obligation, the assessment framework and the procedures to be followed, and makes it possible to carry out various activities (construction, procuring, erection and use) within a project with one environmental permit. The municipal authorities (*Gemeenten*, hereafter referred to as the Municipalities) are appointed as regulators for the application and enforcement of the Environmental Permitting (General Provisions) Act. In relation to the more "complex" activities, however, the competent authorities are the relevant provincial authorities (*Provincies*, hereafter referred to as the Provinces). Complex activities include, among others, the operation of integrated pollution prevention and control installations as included in Annexure I to Directive 2010/75/EU on industrial emissions.[5] There are some cases, such as the development of projects within the Dutch territorial waters, in which the Dutch Minister of Infrastructure and Water Management is the competent authority. For the various subjects to which the permit may relate, or the possibility of deviating from the permit requirement, reference is made to the sectoral legislation which will be further discussed in section 1.5 below.

The permit obligation rests with the person who undertakes the activity such as building and / or running an establishment. Where an activity is undertaken by a company, the permit obligation and the obligation to comply with the general rules lie with that company, irrespective of its legal form or nationality.

In the Netherlands, there is a distinction between the procedures that apply for the purpose of granting a permit. The regular procedure in which the permit is granted after eight weeks, normally applies. The decision can be appealed against by means of objection, appeal and higher appeal. For more far-reaching permits, the extensive procedure must be followed which, in principle, takes 26 weeks. The decision can be appealed against by means of an objection and an appeal.

The permit is accompanied by regulations that must be complied with when conducting the activity. Violation of these regulations can lead to enforcement in the form of an administrative order subject to penalty (*bestuurlijke dwangsom*), an administrative enforcement (*bestuursdwang*) or an administrative penalty (*bestuurlijke boete*). Where general rules apply instead of or in addition to the permit, these must be complied with, and violations can lead to similar enforcement measures.

---

2 *Wet ruimtelijke ordening*, 1 July 2008, Stb 2006, 566.
3 *Wet algemene bepalingen omgevingsrecht*, 1 October 2010, Stb 2008, 496.
4 *Wet milieubeheer*, 1 September 1980, Stb 1979, 442.
5 Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) [2010] OJ L334/17.

1.4.3 *Environmental Management Act (Wet milieubeheer)*

The Environmental Management Act contains the general rules for protecting the environment and is therefore regarded as a framework Act. For this purpose, the Act ties in with the concept of "establishment". For most common establishments, standard rules have been developed to replace the permit requirement. For more complex establishments, however, there is still a permit requirement. The standard rules and additional tailor-made rules can be used as an interim solution. For many subject matters, hard law or soft law provides for minimum requirements to be applied. The Act broadly sets out which legal instruments there are to protect the environment and which principles apply to these. Over and above the minimum requirements, further elaboration at a detailed level is arranged via orders in council (*algemene maatregel van bestuur*) and ministerial regulations (*ministeriëleregelingen*).[6]

The Environmental Management Act is the most important environmental Act. It determines which legal tools can be used to protect the environment. The main instruments are environmental plans and programmes, environmental quality requirements, permits, general rules and enforcement measures. The Act also contains the rules for financial instruments, such as levies, contributions and compensation.[7] More specifically, the Environmental Management Act also contains the rules for applying the EU Emissions Trading System and the Dutch CO^2 tax, which was introduced as of 1 January 2021.

Recently, more and more activities have become exempt from the permit requirement. Instead, these activities are governed by the general environmental regulations contained in the Activities Decree (as defined and set out in section 1.4.4 below). The Activities Decree contains, for example, general regulations for the discharge of wastewater and general regulations with respect to maximum noise levels.

1.4.4 *Activities Decree (Activiteitenbesluit Milieubeheer)*

The Activities Decree[8] is an implementation of the Environmental Management Act and contains environmental rules, especially for companies. All companies in the Netherlands are subject to the Activities Decree, provided that they are an "establishment". Many of the regulations of the Activities Decree have been further elaborated in the Activities Regulation (*Activiteitenregeling*).[9]

The Activities Decree contains rules per type of environmentally harmful activity (for example metalworking) and per type of environmental impact (for example noise). Sometimes it is possible to deviate from the rules of the Activities Decree with "customised regulations". The Activities Decree has different rules for different types of establishments. The Activities Decree makes a distinction between types A, B and C establishments. For the activities regulated by the Activities Decree, three different levels can be distinguished. The least radical is the obligation to comply with the general rules. In some other cases, it is mandatory to report to the authorities before starting or modifying the activity. For the activities with the most impact, the heaviest level applies: the permit obligation.

---

6 "Wet milieubeheer in het kort" (Ministerie van Infrastructuur en Waterstaat), available at: https://www.infomil.nl/onderwerpen/integrale/wet-milieubeheer/wet-milieubeheer/.

7 "Wet milieubeheer" (Ministerie van Infrastructuur en Waterstaat), available at: https://www.rijkswaterstaat.nl/water/wetten-regels-en-vergunningen/natuur-en-milieuwetten/wet-milieubeheer.

8 *Activiteitenbesluit*, 1 January 2008, Stb. 2007, 415.

9 *Activiteitenregeling*, 1 January 2008, Stcrt. 2007, 223; The Activities Regulation is a further elaboration of the Activities Decree. It contains additional technical requirements that companies, to which this applies, must comply with. While the Activities Decree mainly provides purpose requirements, the Activities Regulation is more practice-oriented, so that it is often specified in concrete terms how companies can comply with the relevant regulations. Changes are made to this arrangement on a regular basis. It is essential for companies to comply with these regulations and any changes made thereto, at all times.

1.5 Sectoral legislation

In addition to the general laws that describe the permit obligations and the procedures to be followed, there are numerous sectoral laws that deal with various subjects in terms of content. Some of the most common sectoral laws are discussed below.

1.5.1 Water Act (Waterwet)

In the Netherlands, a country that lies for the greater part below sea level and forms the delta of several major rivers, water plays an important role. The Water Act[10] mainly regulates the management of water systems, including flood defences, surface water and groundwater bodies. The Act is aimed at preventing or limiting flooding, water nuisance and water scarcity, the protection and improvement of the quality of water systems and the fulfillment of social functions by water systems. The Netherlands has a unique system of Water Boards (*Waterschappen*) which exist as independent government bodies alongside Municipalities and Provinces, and which focus entirely on these tasks relating to water. Last but not least, the Water Act makes an important contribution to government objectives, such as the reduction of regulations, simplification of permit systems and reduction of administrative burdens.[11]

1.5.2 Nature Conservation Act (Wet natuurbescherming)

The Nature Conservation Act[12] focuses on both area protection and species protection and ensures:

- simpler rules for the protection of nature;
- decentralisation of powers to Provinces; and
- interconnection with environmental law.

The Act is in line with European regulations and a clear distinction is made between species that are protected on a European level and nationally protected species. The Act includes a permit system, aligned with the European Birds and Habitats Directives.[13] Because the Netherlands is a densely populated country with, among other things, a large and intensive agricultural sector, nature conservation is under great pressure. The issue of nitrogen, in particular, is currently causing many difficulties.

Under the Nature Conservation Act, the authority for granting exemptions and exemptions for spatial interventions lies in principle with the Provinces. Only in the event of an international element to a nature policy, and in spatial interventions involving major national interests will the central government remain the competent authority.[14]

1.5.3 Noise Nuisance Act (Wet Geluidhinder)

An important basis for spatial considerations in the context of noise is the Noise Nuisance Act.[15] This Act defines noise-sensitive functions (such as homes, schools, etc.). By creating mandatory distances, maximum noise levels and noise zones, these objects are protected from noise pollution from road traffic noise, railroad noise and industrial noise.[16]

---

10 *Waterwet*, 22 December 2009, Stb. 2009, 570.
11 "Waterwet" (Ministerie van Infrastructuur en Waterstaat), available at: https://www.infomil.nl/onderwerpen/lucht-water/handboek-water/wetgeving/waterwet/.
12 *Wet natuurbescherming*, 1 January 2017, Stb. 2016, 34.
13 Council Directive 1992/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7.
14 "Wet- en regelgeving" (Ministerie van Infrastructuur en Waterstaat), available at: https://www.infomil.nl/onderwerpen/ruimte/omgevingsthema/natuur/natuur-beleid-w/natuur-beleid-w-wet/.
15 *Wet geluidhinder*, 1 February 1980, Stb. 1979, 99.
16 "Geluid gereguleerd in de Wet geluidhinder" (Ministerie van Infrastructuur en Waterstaat), available at: https://www.infomil.nl/vaste-onderdelen/onderwerpen/geluid/regelgeving/wet-geluidhinder/wet-geluidhinder-'/.

1.5.4 Soil Protection Act (Wet Bodembescherming)

The Soil Protection Act[17] aims to provide effective protection for the soil and the groundwater contained therein. On the one hand, this Act contains provisions to regulate actions that pose a threat to the soil and groundwater. On the other hand, existing contaminations must be tackled and remediated or managed.

Several decrees and regulations serve as a supplement to this Act and contain guidelines for the use of remediation criteria and the determination of remediation goals in case of soil pollution, in order to determine the severity of the pollution and whether a site needs urgent remediation. The obligation to remediate soil contamination is differentiated according to the moment when the contamination arose. In general, the owner is not liable for pollution dating back to before 1975. In the period thereafter, the knowledge of the property owner plays an important role. From 1993 onwards, the owner is in principle responsible and liable, and contaminations from after that date must always be completely cleaned up.

In the case of large-scale and complex groundwater contamination, often in older inner cities and industrial areas, remediation on an individual basis proved to be unfeasible and environmentally unsuitable for various reasons (legal, technical and / or financial). The pollution is usually spread over a considerable area and caused by a large number of sources. The Soil Protection Act offers an area-oriented approach for such situations.[18]

1.5.5 Climate Act (Klimaatwet)

In the Netherlands, a foundation has been incorporated that focuses on sustainability and innovation and aims to speed up the sustainability of the Netherlands, together with companies, governments, social organisations and private individuals. The foundation is known as the Urgenda Foundation.[19]

In December 2019, the Dutch Supreme Court has rendered its judgement in the "Urgenda-case". In short, in 2013 the Urgenda Foundation argued that the government of the Netherlands was taking too few measures to combat climate change and was wrong in postponing these measures. In legal terms, that was a wrongful act of the State. The Dutch Supreme Court has consistently upheld the principle that the government can be held legally accountable for not taking sufficient action to prevent foreseeable harm. The Urgenda Foundation argued that this was also the case regarding climate change. The Urgenda Foundation and its co-plaintiffs believed that preventing dangerous climate change is not only morally and politically the correct thing to do, but that it is also a legal obligation that cannot be ignored. Pursuant to sections 2 and 8 of the European Convention on Human Rights, the Dutch Supreme Court ruled that the State is obliged to achieve a reduction in CO^2 emission, because of the risk of dangerous climate change that can also seriously affect the residents of the Netherlands in their right to life and wellbeing.[20]

As of 1 September 2019, the Climate Act[21] is part of the Dutch legislative framework to implement the Paris Climate Agreement. The goal is to reduce CO^2 emissions in the Netherlands with 49% by 2030 when compared to 1990, and with 95% by 2050. These targets were tightened in 2023 to a 55% reduction by 2030 and climate neutrality by 2050. The implementation of this Act and the achievement of its goals is done through other legislation and on the basis of consultations with the sectors concerned. To this end, the government has concluded the Climate Agreement (*Klimaatakkoord*) with representatives of citizens and businesses.[22]

---

17 *Wet bodembescherming*, 1 January 1987, Stb. 1986, 374.
18 "Achtergrond Wet bodembescherming" (Ministerie van Infrastructuur en Waterstaat), available at: https://www.infomil.nl/onderwerpen/lucht-water/handboek-water/wetgeving/wet-bodembescherming/achtergrond-wet/.
19 "Over Urgenda", available at: https://www.urgenda.nl/over-urgenda/missie-en-werkwijze/.
20 Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006, with comments by J Spier.
21 *Klimaatwet*, 1 September 2019, Stb. 2019, 253.
22 *Klimaatakkooord,* annex with Kamerstukken II 2018/19, 32813, nr 342.

1.5.6 Environment and Planning Act (Omgevingswetwet)

On 1 January 2024, the Environment and Planning Act is likely to come into force. That entry into force is not yet entirely certain, as the supporting IT facilities have not yet been fully implemented. However, the entry into force is not expected to be delayed again.

The Environment and Planning Act brings together the various laws mentioned above into one law and four decrees. At the start, the substantive framework will be largely the same as the previous system. However, the Act offers more opportunities for decentralised authorities to apply local customisation. It is therefore expected that the substantive framework will change more and more and be fleshed out at local level. In addition, vigilance is required for the formal aspects, as the licensing and reporting obligations are structured differently.

1.6 Tax legislation

Lastly, in the Netherlands different environmental taxes apply to companies, such as energy tax, waste tax and the tax on tap water. With these environmental taxes, the government can encourage a more economical use of water, raw materials and fuels and prevent pollution. As of 1 January 2021, a national CO2 tax applies to industrial companies with high CO2 emissions. For example, companies are encouraged to take into account the consequences of CO2 emissions for people and the environment in their investments. The levy is part of a broader package of measures that encourages industrial companies to invest in sustainability. This has been agreed in the aforesaid Climate Agreement.

2. Climate risk and disclosure has become a focus of a number of states and regulatory bodies and is becoming an important element of corporate governance. What are the relevant governance, corporate, securities and financial disclosure laws, regulations, rules or industry benchmarks with respect to the obligations of companies and / or directors to:

- **understand and continually assess existing and emerging environmental risks that may affect a company's business;**
- **disclose environmental risks; and**
- **factor environmental risks into financial reporting; and**
- **what are the consequences of non-compliance?**

2.1 Introduction

Sustainability has become a priority for corporations across the world as the impact of climate change continues to grow. In the Netherlands, there has been a noticeable increase in laws and regulations promoting sustainability in companies. This is in line with the intention of policy makers to reduce carbon footprint and move to a more sustainable economy. Various governance, corporate, and financial disclosure laws have been drawn up in order to constrain companies from negatively affecting the environment and to ensure compliance with the environmental legislation. In this paragraph, we will briefly introduce the key governance and disclosure regulations and laws for private and / or public companies in the Netherlands. Furthermore, we will provide insight in the possibility of holding a director liable for not complying with these regulations or laws. Some of these are based on Dutch law, but most of these regulations derive from EU legislation.

2.2 Disclosure obligations of Dutch companies

As stated before, most obligations relating to climate disclosure derive from EU legislation which is applicable across the EU, including the Netherlands. The most notable regulations are the:

- Corporate Sustainability Reporting Directive (CSRD);[23]
- Sustainable Finance Disclosure Regulation (SFDR);[24] and
- Taxonomy Regulation.[25]

We will touch upon the obligations deriving from these regulations as well as from Dutch civil law.

According to Dutch civil law, the management boards of private and public companies are required to include an analysis of the company's performance based on multiple financial and non-financial factors, including environmental topics, in the directors' report.[26] Furthermore, the management boards of public companies that are qualified as so-called large public interest entities (PIEs) (*grote organisatie van openbaar belang (OOB's)*), are required to include a separate non-financial statement in the directors' report.[27]

On 5 January 2023, the the Corporate Sustainability Reporting Directive (CSRD) entered into force. The CSRD mandates companies within its scope to annually report on a variety of non-financial sustainability matters in a non-financial report. The CSRD does not establish a completely new regulatory framework on its own. As the CSRD replaces certain provisions of the Non-Financial Reporting Directive 2014/95/EU (NFRD) and modifies reporting obligations regarding non-financial reporting that already exist under the Accounting Directive (Directive 2013/34/EU).

Large undertakings[28] headquartered in the European Union and small[29] and medium[30]-sized companies listed on European regulated markets (except for listed micro-enterprises) will be subject to the new sustainability reporting standards introduced by the CSRD. One of the groundbreaking provisions of the CSRD is its extraterritorial scope, which means that also non-European undertakings with a net turnover of €150 million in the EU for two consecutive years and which undertakings have at least one subsidiary or branch in the EU which meets a certain turnover threshold must also comply with the CSRD.

Undertakings subject to the CSRD are required to provide detailed information on an extensive range of sustainability topics in their non-financial reports. The concept of sustainability as outlined in the CSRD is comprehensive and encompasses more than just environmental matters and the transition to a circular economy, but also includes social (including human rights) and (corporate) governance matters. The CSRD will enter into force in phases, meaning that depending on the

---

23 Directive (EU) 2022/2464.
24 Regulation (EU) 2019/2088.
25 Regulation (EU) 2020/852.
26 Dutch Civil Code, art 2:391, s 1 and the Non-Financial Reporting Directive (NFRD) 2014/95/EU.
27 The definition "public interest entity" is defined in article 2(1) of the Accounting Directive and is understood as:
   1. An undertaking listed on a regulated EU market. A regulated market means an exchange such as a stock exchange within the meaning of article 4(1) number 21 MiFID II. Please note that a "Regulated Market" is a multilateral system such as a stock exchange but does not include any other type of multilateral trading facilities such as the organized trading facility or the multilateral trading facility;
   2. Certain types of financial services companies such as insurance or credit institutions as defined in article 2 (1) council directive 91/674/EC or article 4(1) of the Capital Requirements Regulation (EU/575/2013); or
   3. Companies that have been specifically identified as public interest entities by their country of incorporation.
28 A "large undertaking" is a defined in article 3(4) of the Accounting Directive and means an entity that exceeds at least two of the following criteria: a net turnover of €40 million; a balance sheet total of €20 million; or 250 employees on average over the financial year. See also the paragraph on article 29a CSRD for a more elaborate consideration.
29 A "small undertaking" is a defined in article 3(2) of the Accounting Directive and means an entity that does not exceed the limits of at least two of the following criteria: A net turnover of €8 million. A balance sheet total of €4 million. 10 employees on average over the financial year.
30 A "medium undertaking" is a defined in article 3(3) of the Accounting Directive and means an entity that is not a small entity that do not exceed two of the following criteria: a net turnover of €40 million; a balance sheet total of €20 million; or 50 employees on average over the financial year.

type of undertaking, the size (in turnover, assets or workforce) will determine when the CSRD becomes applicable. For "large undertakings" that are regarded a PIE and that have a workforce of more than 500 employees, the reporting obligations are due from 2025 for the financial years of 2024. For "small" and "medium" sized undertakings that are regarded PIE reporting in accordance with the CSRD is due from 2027 for financial years starting on or after 1 January 2026. Non-EU parent companies that satisfy the criteria outlined in article 40a CSRD, must comply with the reporting obligations by 2029 for financial years starting on or after January 1st, 2028. However listed SMEs may decide to opt out of the reporting requirements for a further two years. The last possible date for a listed SME to start reporting is financial year 2028, with first sustainability statement published in 2029.

Undertakings in scope of the CSRD are required to disclose information in compliance with the European Sustainability Reporting Standards (ESRS). The ESRS were adopted on 31 July 2023 and consist of 12 sector agnostic standards. Like the CSRD itself, the ESRS will enter into effect in phases, depending on the size, turnover and sector in which the undertaking is active, certain (additional) disclosure obligations will enter into effect.

The SFDR specifically targets financial market participants with a financial product and financial advisors with three or more employees. Financial market participants include credit institutions, investment firms, asset managers, alternative investment fund managers, pension funds and life insurers. A financial product includes pension plans, insurance and mutual funds. The SFDR, became applicable on 10 March 2021, and imposes reporting requirements at both entity and product levels. These reporting requirements are detailed in the Regulatory Technical Standards (RTS), which entered into force on 1 January 2023.

Lastly, the Taxonomy Regulation works as a classification system and establishes criteria for deciding whether an economic activity can be considered environmentally sustainable.

2.3 Dutch Corporate Governance Code

Pursuant to the Dutch Corporate Governance Code (Code), the board of a public company develops a vision on long-term value creation for the company and its affiliated enterprises and formulates a suitable strategy. When designing the strategy, attention is in any case given to, among others, environmental matters, social and employee-related matters, the chain within which the enterprise operates, respect for human rights and flighting corruption and bribery.[31] Both the management board and the supervisory board are responsible for compliance with the Code. Whereas companies are obliged to comply with legislation, compliance with the Code is based on the "comply or explain" principle. As such, it offers public companies room to depart from the laid-out principles and best practices. The management board and the supervisory board account for compliance with the Code in the general meeting and provide a substantive and transparent explanation for any departures from the principles and best practice provisions.

2.4 Directors' liability

As previously mentioned, non-compliance with climate risk and disclosure obligations could result in the liability of the director(s) of the company. In terms of the Dutch Civil Code each director is responsible for the general course of business.[32] A director is fully liable with regard to improper management, unless, partly in view of the duties assigned to others, the director cannot be seriously blamed and has not been negligent in taking measures to avert the consequences of improper management. Whether there is a serious misconduct (*ernstig verwijt*) in a particular case must be assessed on the basis of all the circumstances of each case. The circumstances to be taken into account include, among other things, the nature of the activities performed by the legal person, the generally ensuing risks, the division of tasks within the management board, any guidelines applicable to the management board, the information that the director had or should

[31] "De Nederlandse Corporate Governance Code" (December 2022), available at: https://www.mccg.nl/publicaties/codes/2022/12/20/dutch-corporate-governance-code-2022 at principle 1.1.1.

[32] Dutch Civil Code, art 2:9, s 2.

have had access to at the time of the decisions or conduct of which he is accused, the insight and care that may be expected from a director in connection with his task, and whether the director performed this task conscientiously.[33]

Furthermore, a third party can invoke article 6:162 of the Dutch Civil Code to hold the director of a company liable if the director can be accused of a wrongful act. In the event that the director acted in his capacity as director, the requirement of a serious personal misconduct (*persoonlijk ernstig verwijt*) must also be fulfilled. In general, the requirement of serious personal misconduct will be met if a director enters into an obligation on behalf of the company while knowing or while reasonably ought to have known that the company will not be able to meet that obligation, and that the company will not provide redress for the resulting damage suffered by the third party. The latter requirement is also known as the *Beklamel*-standard, which is laid down in Dutch case law.[34]

In the Netherlands, the most notable case relating to "climate change litigation" is the Milieudefensie v Royal Dutch Shell case. Milieudefensie et al. claimed that the activities of Royal Dutch Shell (Shell) constitute an unlawful act towards them. The District Court of the Hague rendered a judgment in which it ordered Shell to reduce CO2 emissions.[35] On 25 April 2022, Milieudefensie, issued a letter addressing the board of directors of Shell and calling on the company to comply with the judgment of the Dutch court. Milieudefensie further stated in this letter that each of the members of Shell's board of directors could in future be held personally liable for any failure by Shell to take action.

3. Identify the insolvency regimes that are available and how they interplay with the environmental protection regimes – including the obligations that insolvency practitioners or lenders have with respect to environmental protection regimes (e.g. remedial action, disclosures to the market and the management of environmental risks)

3.1 General

In the Netherlands, when a company is declared bankrupt, the insolvency practitioners and the government have different interests. This follows from the insolvency practitioners' primary focus on the interests of creditors, versus the primary focus of the government on the general public interest. Therefore, cases where administrative law and bankruptcy law meet, will often lead to uncomfortable situations and legal proceedings.

Bankruptcy (*faillissement*) and suspension of payments (*surseance van betaling*) are the main insolvency proceedings in the Netherlands. As of 1 January 2021, the Act on the confirmation of restructuring plans (*Wet homologatie onderhands akkoord* (WHOA)) entered into force, which introduced a new proceeding that has the possibility to restructure financially distressed but viable businesses outside of a formal insolvency proceeding. All three possible proceedings are governed by the Dutch Bankruptcy Act (*Faillissementswet*). In the paragraphs below, we explain the intersections between each of these insolvency regimes and Dutch environmental protection regimes.

3.2 Bankruptcy proceedings

A bankruptcy proceeding is a proceeding aimed at the liquidation of the debtor's assets. Technically, bankruptcy is an (enforceable) attachment of the debtor's assets, which is settled for the benefit of all its creditors.

---

33 Supreme Court 10 January 1997, ECLI:NL:HR:1997:ZC2243 (*Staleman / Van de Ven*).
34 Supreme Court 6 October 1989, ECLI:NL:HR:1989:AB9521 (*Beklamel*); and Supreme Court 8 December 2006, ECLI:NL:HR:2006:AZ0758 (Ontvanger / Roelofsen).
35 District Court the Hague, 26 May 2021, (ECLI:NL:RBDHA:2021:5339).

The criterion that needs to be fulfilled to have a debtor declared bankrupt is that the debtor "has ceased to pay its debts".[36] It is therefore not necessary that the debtor is unable to pay its debts. It may be that the debtor is unwilling or that the debtor is solvent but does not have the liquidity necessary to continue payment. In this situation, the debtor could also apply for a suspension of payments which will be discussed in section 3.3. A debtor can be declared bankrupt after filing for insolvency itself or upon request of one (or more) of its creditors.

On commencement of the Dutch bankruptcy proceeding an insolvency practitioner (*curator*) is appointed by the court and is in charge of the debtor's business and the subsequent liquidation of its assets or continuation of the business after the declaration of bankruptcy. The insolvency practitioner acts primarily on behalf of the joint creditors of the insolvent debtor.

After the declaration of bankruptcy, the position of a creditor is based on its type of claim and the ranking thereof. Pursuant to Dutch civil law, four types of claims can be distinguished: estate claims, preferential claims, unsecured claims and non-verifiable claims. In addition, secured creditors (*separatisten*) who have a security right over assets of the bankrupt debtor, for instance a right of pledge or a right of mortgage, can (in principle) act by executing their rights in relation to that secured asset as if no declaration of bankruptcy took place. However, a secured creditor with an undisclosed right of pledge over moveable assets must take into account a special priority right (*voorrecht*) of the Dutch Tax Authority (de *Belastingdienst*) in the context of certain movable assets found on the premises, and at the disposal of the bankrupt debtor. After all, this special priority right existing on the basis of the Tax Collection Act (*Invorderingswet 1990*) may mean that the privilege of the Dutch Tax Authority has priority over the right of a secured creditor with a right of undisclosed pledge. The above-mentioned claims are set out below:

- **Estate claims (*boedelvorderingen*)**

  A claim qualifies as an estate claim:

  (i) pursuant to a statutory provision;

  (ii) if the debt was willingly entered into by the insolvency practitioner in his capacity as such; or

  (iii) if it arises from acts of the insolvency practitioner that violate obligations or commitments that he / she has to comply with in his / her capacity, *qualitate qua*.[37]

  Estate claims have priority over all other claims and do not have to be filed for verification. The salary of the insolvency practitioner and lease or rent payments arising after the declaration of bankruptcy are typical estate claims, as well as claims resulting from any post-bankruptcy obligations that benefit the estate.

- **Preferential claims (*preferente vorderingen*)**

  Preferential claims are claims with a law-based preference in relation to the proceeds in the event that a distribution takes place. Preferential claims must be filed for verification with the insolvency practitioner. There are two types of preferential claims: claims with a statutory priority and claims where the priority follows from a specific right that the creditor has. The latter type of claims has a *de facto* priority because this can be enforced from, among other rights, the right of retention (*recht van retentie*), the right to reclamation (*recht van reclame*), retention of title (*eigendomsvoorbehoud*) or the right of set-off (*verrekening*). Preferential claims that are created by statutory provisions can have a priority on all the debtor's assets or on a specific asset. The claims of the Dutch Tax Authority and the Employee Insurance Agency (*UWV*) are examples of such claims that have statutory priority. Although, in case creditors have the same preferential right in respect of the same asset(s), the *paritas creditorum* principle will

[36] Dutch Bankruptcy Act, art 1.

[37] Supreme Court 19 April 2013, ECLI:NL:HR:2013:BY6108, *NJ* 2013/291, with comments by F M J Verstijlen (*Koot Beheer / Tideman*).

apply, meaning that all creditors have an equal right to receive payment and that the proceeds of the bankrupt estate shall be distributed in proportion to the size of the creditors' claims.

- **Unsecured claims (*concurrente vorderingen*)**

  Unsecured claims against the debtor are claims that arose before the bankruptcy declaration of the debtor, or post-bankruptcy claims that have arisen from the legal relationship existing prior to the bankruptcy and which do not extend the rights to claims which the counterparty had at the time of the bankruptcy declaration. Unsecured claims must also be filed for verification with the insolvency practitioner after the bankruptcy of the company. These claims have the lowest ranking in a distribution of proceeds, and payment or interest (accrued prior to the date of bankruptcy) can therefore only be accrued by the unsecured creditors if there are any proceeds remaining after all of the other creditors with a higher ranking have been paid in full.

- **Non-verifiable claims (*niet-verifieerbare vorderingen*)**

  Non-verifiable claims are claims against the debtor that arose after the commencement of a bankruptcy proceeding and do not result from a pre-bankruptcy obligation or contract, and which do not meet the conditions of an estate claim. Therefore, such claims cannot be filed for verification with the insolvency practitioner and creditors with a non-verifiable claim will not share in the proceeds.

Besides the interest of creditors, nowadays the insolvency practitioner also has to take into account other interests with a broader society-wide character, which finds its origin in Dutch case law.[38] One example hereof is the general environmental protection which is served by adequate compliance with existing environmental (permit) laws.[39] The insolvency practitioner can under certain circumstances be held liable on the grounds of non-compliance with these duties.

The two general types of liability in this respect are: (i) the liability of the insolvency practitioner *qualitate qua* (that is, in his / her capacity as insolvency practitioner); and (ii) the liability of the insolvency practitioner *pro se* (that is, in person / personally). The latter liability will only occur in very exceptional circumstances, since compliance with the regulations is an obligation of the insolvency practitioner in his capacity *qualitate qua*.

According to case law of the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*, hereafter referred to as *ABRvS*), from the effective date of bankruptcy, the insolvency practitioner is designated as the operator of the company and therefore responsible for compliance with all environmental (permit) regulations that are applicable to the debtor or the bankruptcy estate, and all the obligations arising pursuant thereto.[40] This will apply even if the insolvency practitioner does not continue the debtor's business.

On top of that, the insolvency practitioner will become responsible for offenses that were already initiated or committed before he / she was in the picture.[41] In the context of enforcement, he / she can be held accountable by the competent public authority as a violator of the applicable environmental (permit) regulations and pursuantly administrative sanctions – such as an administrative order subject to penalty, an administrative enforcement or an administrative penalty – can be imposed on him / her. In addition, if the bankruptcy estate contains sufficient funds, an order

---

38 Supreme Court 24 February 1995, *NJ* 1996/472 (Sigmacon II), para 3.5; Supreme Court 19 April 1996, *NJ* 1996/727 (*Maclou / Curatoren van Schuppen*), paras 3.5.2 and 3.6; and Supreme Court 19 December 2003, *NJ* 2004/293 (*Curatoren Mobell / Interplan*), para 3.5.2.

39 ABRvS 11 July 1997, *AB* 1998, 268 (*Alvat-uitspraak*) and ABRvS 6 July 2005, case nr 200406882/1.

40 Environmental Management Act, art 8.20; ABRvS 11 July 1997, *AB* 1998, 268 (*Alvat-case*); ABRvS 6 July 2005, case nr 200406882/1; and ABRvS 9 May 2007, case nr 200604496/1, with comments by R Mellenbergh, "ABRvS 9 May 2007, 200604496/1 (Thielen/Gemeente Maasdriel)", *TvI* 2007, 34, p 175-178.

41 "Milieuverplichtingen in faillissement: (g)een vuiltje aan de lucht?", Boels Zanders Advocaten (February 2021), available at: https://www.boelszanders.nl/milieuverplichtingen-in-faillissement-geen-vuiltje-aan-de-lucht/.

can be imposed on him / her to carry out a soil investigation which is derived from applicable environmental law. Administrative law and bankruptcy law must therefore be able to coexist.[42]

Furthermore, the insolvency practitioner, as the operator of occupational activities, falls within the scope of the Directive on environmental liability with regard to the prevention and remedying of environmental damage.[43] This Directive has been implemented in the Netherlands and covers the preventive and remedial actions that are imposed on the insolvency practitioner, once he becomes the operator of the business.

3.3 Suspension of payments

A suspension of payments provides a debtor with a temporary relief of claims of its unsecured, non-preferential creditors and enforcement measures which will be suspended after suspension of payment is granted. Suspension of payments can only be granted upon request of the debtor itself and will be granted by the court on the same day as requested. Suspension of payments gives the debtor the possibility to reorganise its business after which it can continue its business and ultimately fulfil its creditors' claims.

After suspension of payments is granted, an administrator (*bewindvoerder*) will be appointed by the court. During a suspension of payment proceeding the company can only be legally represented jointly by the directors and the court-appointed administrator. During the proceeding, an arrangement can be offered to the unsecured creditors. An arrangement can be approved in case the majority (at least 50%) of the creditors and at least 50% of the amount of the admitted claims, vote in favour of the arrangement. Secured and certain preferential creditors (such as the tax and social security authorities) are generally excluded from the suspension of payments proceeding. They may enforce their rights to seek recourse for their claims.[44] Since environmental claims will in general qualify as unsecured claims, such claims can be included in the arrangement. Therefore, if an arrangement is proposed and sufficient creditors vote in favour of the arrangement, the arrangement will also apply to such claims. However, most suspension of payments proceedings are converted into a declaration of bankruptcy in the end, because the business is considered unviable and therefore unable to (partially) fulfill its creditors' claims. Once the proceeding has been converted into a bankruptcy proceeding, the aforesaid under section 3.2 above applies.

3.4 WHOA proceeding

The new out-of-insolvency restructuring proceeding with very limited court involvement introduces a tool to a debtor (or the restructuring expert, if appointed) to offer a restructuring plan to its creditors. A restructuring plan can contain several options, such as deferring or partially releasing payment obligations, an amendment of the terms of a contract, or a debt-for-equity swap. This proceeding is based on the United Kingdom's scheme of arrangements and the United States' Chapter 11 proceedings.

The debtor has great latitude in determining the content and the form of the plan. As long as one impaired class of creditors votes in favour of the plan and no creditor is worse off than in the event of liquidation of the debtor' assets, the national court can approve the plan and make it binding on all creditors – even on the creditors that voted against the plan. In principle, the debtor can thus discharge any environmental claim. As of yet, there are no limitations on the power of the debtor to discharge environmental claims, having regard to the large extent of freedom in a WHOA proceeding. In addition, a stay can be imposed by the court on request, which makes it impossible for third parties to take recourse against goods of the debtor without authorisation of the court. Since this is a fairly new proceeding, it is expected that it will evolve in future case law, similar to

---

42 Rotterdam District Court, 23 September 2020, ECLI:NL:RBROT:2020:8544, with comments by C N J Kortmann and A M Zwanenburg.

43 Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage [2004] OJ L143/56.

44 "Global Restructuring and Insolvency Guide: the Netherlands", Baker McKenzie (2016), available at: https://www.bakermckenzie.com/-/media/files/expertise/banking-finance/bk_globalrestructuringinsolvencyguide_20170307.pdf?la=en.

the case law in the United States and the United Kingdom, regarding the Chapter 11 processes and the scheme of arrangement, respectively.

4. What potential causes of action are available in relation to environmental risks against companies, directors, and any other relevant stakeholders, which insolvency practitioners and lenders should be aware of in an insolvency and restructuring process?

As mentioned in the previous section, in relation to environmental liability an administrative sanction can be imposed on a legal person by a public authority in the form of an administrative order subject to penalty, an administrative enforcement or an administrative penalty. The latter is simply a monetary claim, while the other two actions are mostly remedial in nature. However, the forfeited penalties after non-compliance with an administrative order subject to penalty, as well as costs incurred in exerting administrative enforcement, also result in monetary claims.

According to established administrative case law, obligations arising from environmental legislation with respect to a facility belonging to the bankrupt estate are obligations of the insolvency practitioner in his / her capacity as insolvency practitioner of the estate and not of the bankrupt debtor as legal entity. This means that the insolvency practitioner has – in his / her capacity as insolvency practitioner – an independent obligation to comply with environmental legislation in respect of a facility belonging to the estate. If the insolvency practitioner fails to comply with such obligation, administrative sanctions may be imposed on him in his capacity *qualitate qua*.

There is also a more general action available which is the action arising from an unlawful act (*onrechtmatige daad*). The unlawfulness of an act in light of environmental liability is determined on the basis of the doctrine of endangerment and whether the duty of care is fulfilled in light hereof. The first aspect addresses the knowledge of the risks or damages at the time of action, where the second aspect assesses whether the correct measures have been taken to prevent the realisation of these risks. General factors that play a role in determining the scope of the duty of care are formulated in Dutch case law.[45]

The tort liability claims resulting from such unlawful acts, and which are imposed on the debtor prior to its declaration of bankruptcy, will qualify as unsecured claims, entailing that these have no priority in a bankruptcy proceeding and can be subject to a (court-approved) discharge in a suspension of payments or WHOA proceeding. However, tort liability claims that are imposed on the insolvency practitioner in his capacity *qualitate qua* during a bankruptcy proceeding qualify as estate claims.

After the declaration of bankruptcy, an insolvency practitioner has the obligation to investigate whether the directors fulfilled their tasks in line with their legal duties. In the event of improper fulfilment of these duties, the directors can be held jointly and severally liable for the damages occurred as a result thereof.

Under certain conditions, the directors can be held liable for the full deficit of the bankruptcy. An additional requirement in this regard is that the improper performance of the directors' duties is an important cause of the bankruptcy.

It is worth mentioning that a personal serious misconduct is not required in order to invoke the relevant provision, namely article 2:248 of the Dutch Civil Code. The insolvency practitioner must prove that no reasonably minded director would have acted in the same way under the same circumstances and, as mentioned above, that the mismanagement is an important cause of bankruptcy. This is a heavy burden of proof for the insolvency practitioner. However, the insolvency practitioner is assisted by presumptions laid down in the Dutch Civil Code.[46] If the board of directors failed to fulfill the obligations laid down in the Dutch Civil Code[47] (which consist of an administration

[45] Supreme Court 5 November 1965, ECLI:NL:HR:1965:AB7079, *NJ* 1996, 136 (*Kelderluik*).
[46] Dutch Civil Code, art 2:248, s 2.
[47] *Idem*, arts 2:10 and 2:394.

obligation and an obligation to publish the annual accounts in time,) this will result in the irrefutable establishment of the manifestly improper performance of their duties and the presumption that this is a cause of bankruptcy. To this day, environmental protection obligations, such as disclosure of environmental risks, are not included in these statutory presumptions. However, more and more environmental obligations arise as a result of the increasing set of environmental legislation, and thus the trend of environmental issues hiding behind directors' liability claims will also increase. It is therefore conceivable that the disclosure of environmental risks will take on a different form in the future and may be included in the proper administration requirement of the Dutch Civil Code.[48] If regulation will be provided in this manner, the inadequate administration or disclosure of environmental risks may also lead to an irrefutable presumption that leads to personal liability of the directors.

5. Having regard to the obligations, liabilities and potential causes of action identified in the previous questions, in what circumstances, if any, could an insolvency practitioner or lender be personally liable for environmental claims and liabilities of a company, including with respect to the management of environmental risks? What protective steps can insolvency practitioners and lenders take to avoid such personal liability?

5.1 Insolvency practitioner

An insolvency practitioner can only be held personally liable (*pro se*) for environmental claims in extraordinary circumstances where a personal severe wrongful act is evident. As long as the (legal) acts of an insolvency practitioner fall under the normal course of business relating to the settlement of a bankruptcy – either a continuation or a liquidation – there will merely be a liability *qualitate qua*.[49] In the latter event, the environmental claim will be a claim against the bankruptcy estate, as opposed to the former event in which the environmental claim will lead to a claim against the insolvency practitioner's personal assets. Whether personal liability comes into play is assessed by a specific standard known as the duty of care (*zorgvuldigheidsnorm*) that relates to the profession of the insolvency practitioner, which is laid down in Dutch case law.[50] This standard requires that an insolvency practitioner should act "as it may reasonably be expected of a well perceptive and experienced insolvency practitioner who performs his duties with conscientiousness and commitment".[51] An example of non-compliance with this so-called *Maclou*-standard[52] could be in an event of a sale of property from the bankrupt estate where the insolvency practitioner intentionally withholds facts regarding the property's condition (for example, in relation to environmental obligations) or if he has ordered the illegal dumping of waste.

5.2 Lender liability

Claims as a result of environmental liability can in general be a risk for lenders if the liability is based on contamination of the property, since this may result in a reduction of the collateral values that were held as security for the loan. Furthermore, all monetary environmental liability claims are harmful to the lender regarding the ability of repayment of the loan by the debtor. However, personal liability of a lender for environmental claims and liabilities of a company is very exceptional and can only be imposed on the general ground of a wrongful act. The latter might only occur if the lender strongly participates in the management of a debtor, thereby facing the possibility of being held responsible as the actual perpetrator, and in this respect engages in a wrongful act by violating the duty of care.[53]

---

48 *Idem*, article 2:10.

49 R Mellenbergh, *Bedrijfsovername en milieurecht: een onderzoek naar juridische aspecten van bedrijfsovername en milieu* (Recht en Praktijk, nr 170, Deventer: Wolters, 2009), p 468.

50 Supreme Court 19 April 1996, *NJ* 1996, 727 (*Maclou / Prouvost*), para 3.6. See also Court of Appeal of Arnhem 26 November 2002, *NJ* 2003, 513, para 3.12.

51 *Ibid*.

52 *Ibid*.

53 R Mellenbergh, *Bedrijfsovername en milieurecht: een onderzoek naar juridische aspecten van bedrijfsovername en milieu* (Recht en Praktijk, nr 170, Deventer: Wolters, 2009), p 464.

6. How are climate-change and environmental claims recognised in determining a company's solvency (for example, as present, contingent or future liabilities) and when will they provide a basis for seeking insolvency protections?

As noted, the aim of a bankruptcy proceeding is the liquidation of the debtors' assets for the benefit of all of its creditors, which liquidation is arranged for by the appointed insolvency practitioner.

According to Dutch law, there is no ruling that obliges the board of directors of a company to file for the bankruptcy of the company if it is in financial distress. However, if the board members allowed for the company's debts to increase by entering into contracts with creditors while knowing or while they reasonably should have known that the company would not be able to meet its obligations pursuant thereto, they can be held personally liable in a subsequent bankruptcy on the basis of the Dutch Civil Code[54] and the fulfilment of the *Beklamel*-standard.[55] This standard therefore stimulates the filing of bankruptcy instead of entering into commitments and delaying bankruptcy to the detriment of the company and its creditors.

Bankruptcy can be requested not only by the debtor itself, but also by its creditors, which is contrary to the suspension of payments proceeding. Any creditor, even a foreign creditor, may file a bankruptcy petition, as long as the applicant has a reasonable interest in the declaration of bankruptcy.[56] This means that, among others, the Dutch Tax Authority as well as the administrative authorities can file a petition for the bankruptcy of a debtor. However, a declaration of bankruptcy will rarely be initiated by organs of the State. To fulfil the criterion of "having ceased to pay debts", there must be a plurality of creditors: the debtor must have left a minimum of two creditors unpaid. For a creditor to prove plurality there must therefore be at least one supporting claim (*steunvordering*) next to its own claim. The conditions that have to be met for the existence of a supporting claim are not high, as this claim does not even have to be due and payable, as long as the bankruptcy applicant's claim is, and the supporting claim must qualify as a claim that can be filed (for verification) in bankruptcy.[57] However, a future claim – such as a future forfeited penalty claim which is subject to an administrative order subject to penalty – cannot qualify as a supporting claim, because it is uncertain whether the claim will actually materialise.[58]

The Dutch Supreme Court has ruled that claims of organs and parts of the State that do not have a separate legal personality, such as claims of the Tax Collector (*Ontvanger*) and the Dutch Tax Authority, qualify pursuant to the Dutch Bankruptcy Act as claims of one and the same creditor, namely the State. Therefore, administrative claims pursued by different direct or indirect organs of the State cannot be put forward as two unpaid claims by separate creditors in order to fulfil the plurality requirement.[59]

The administrative sanctions that are notified and forfeited or enforced before the declaration of bankruptcy qualify as unsecured claims in a bankruptcy proceeding. After the declaration of bankruptcy, the notice of an administrative sanction must be addressed to the insolvency practitioner. If the administrative authority nevertheless knocks on the door of the bankrupt debtor, the forfeited penalty payments or the costs of the administrative enforcement resulting from an administrative order subject to penalty, respectively, an administrative enforcement-imposed pre-bankruptcy, qualify as non-verifiable claims.[60]

---

54 Dutch Civil Code, art 6:162.
55 Supreme Court 6 October 1989, ECLI:NL:HR:1989:AB9521 (*Beklamel*).
56 "International Insolvency", de Rechtspraak, available at: https://www.rechtspraak.nl/English/Pages/International-Insolvency.aspx; and Supreme Court 26 June 1942, ECLI:NL:HR:1942:66, *NJ* 1942/585.
57 Supreme Court 11 July 2014, ECLI:NL:HR:2014:1681, *NJ* 2014/407 (*ABN AMRO / Berzona)*.
58 Supreme Court 6 March 2020, ECLI:NL:PHR:2020:215, *rechtspraak.nl*, para 2.9.
59 Supreme Court 26 Oktober 2018, ECLI:NL:HR:2018:1988, *rechtspraak.nl*.
60 ABRvS 13 February 2013, ECLI:NL:RVS:2013:BZ1261 with comments by C M M van Mil (*Dutch Infra Tech B.V.*), para 4.3; and A A J Smelt, "Bestuursdwang, bestuurlijke dwangsom en bestuurlijke boete bij faillissement", *TvI* (2008) 40, paras 7.1 and 7.2.

In a WHOA proceeding, not all shareholders or creditors are required to be offered a restructuring plan. In any event, all creditors and shareholders whose rights are amended in the plan must be enabled to submit a vote on the plan.[61] This is also based on the "no creditor worse off principle". A debtor may choose to leave the administrative authority out of the plan if its rights will not change as a result of the restructuring plan. When leaving out a creditor (or a group of creditors), the creditor will have to be paid in full and its claims can thus not be discharged. When the administrative authority is included in the restructuring plan, there is a possibility to fully or partly discharge the environmental claim/s if the restructuring plan is approved by the court.

7. How are climate change and environmental claims and claimants recognised in insolvency processes, including with respect to voting rights, the priority rankings of claims in insolvency and with respect to affected collateralised assets?

The leading principle of Dutch bankruptcy law is the so-called *paritas creditorum* principle, which means that all equally qualified or ranking creditors have an equal right to payment on their claims, and that the proceeds of the bankrupt estate shall be distributed in proportion to the size of their claims (*pro rata*).[62]

Every group of creditors have claims with different rankings. The ranking of a claim is important in bankruptcy, as the proceeds of liquidation are divided amongst the creditors based on this ranking. In bankruptcy higher ranking creditors must be paid out in full before creditors with a lower ranking claim receive payment (that is, the absolute priority rule).

In a WHOA proceeding, the creditors are divided into different creditor classes. Creditors and shareholders whose claims against the debtor's assets rank differently must in any event be placed in different classes. The absolute priority rule is generally applied to the division of the restructuring proceeds in case of an involuntary restructuring plan (that is, with one or more dissenting classes), subject to a few exceptions, such as the 20% rule as referred to hereafter in paragraph 7. Therefore, in both a bankruptcy proceeding and a WHOA proceeding, a higher ranking means a better chance of receiving any pay-out.

In the Netherlands there are two important types of climate-change and environmental claims that may arise, namely environmental liability arising from:

- acts and omissions breaching a permit or conditions of a permit; and
- the presence or escape of pollutants.

Other than the aforesaid claims, as previously discussed, many environmental taxes have been implemented in the Netherlands and should also be considered as environmental claims to the extent that these taxes apply to the relevant debtor.

It is important to assess how the environmental claims are classified in a bankruptcy. If the claim qualifies as an estate claim, the creditor does not have to submit it for verification as the creditor has a direct claim against the estate. In that case, the amount can in principle be paid directly from the estate, provided that the estate has sufficient funds. An estate claim therefore provides the best chance of payment in a bankruptcy proceeding.

As of yet, there is no specific recognition of environmental-related claims in bankruptcy proceedings. There is no law that qualifies such claims as estate claims or preferential claims. The environmental-related claims are therefore treated as unsecured, non-preferential claims and their priority in ranking of payment depends on the time of their materialisation, as discussed above.

If the administrative enforcement and the claims arising from the costs made exerting such claim are both imposed on the debtor prior to the commencement of a bankruptcy proceeding, these claims must be considered as unsecured claims. The same applies to penalty claims that are already

[61] "Q&A WHOA", Van Benthem & Keulen, available at: https://www.vbk.nl/thema/qa-whoa.
[62] See also section 3.2 above.

forfeited prior to the declaration of bankruptcy, following from an administrative order subject to penalty. On the other hand, claims and penalties that are forfeited and charged to the debtor after the declaration of bankruptcy, but which arose from pre-bankruptcy administrative acts, are non-verifiable claims.[63] Only if the public authority subsequently, post-bankruptcy, imposes the administrative order subject to penalty or administrative enforcement on the insolvency practitioner or informs him hereof, the claims arising pursuant thereto qualify as estate claims. This is because such claims will in that event result from an imposed duty on the insolvency practitioner in his capacity as such.[64] Such claims will therefore benefit from a high priority and are more likely to be paid out than the unsecured claim mentioned above. Moreover, the administrative penalty imposed on the debtor before bankruptcy is a verifiable claim. After the bankruptcy declaration, an administrative penalty can only be accrued if it is imposed on the insolvency practitioner *qualitate qua,* as it will qualify as an estate claim in that case. If it is imposed on the bankrupt debtor, it is a non-verifiable claim.[65]

As previously mentioned, general obligations arising from environmental legislation with respect to a facility belonging to the bankrupt estate are obligations of the insolvency practitioner in his / her capacity as insolvency practitioner. Debts arising from such administrative law charges are estate claims in the event the insolvency practitioner fails to comply with the environmental obligations. After all, these debts are a consequence of an act or omission of the insolvency practitioner in violation of an obligation that he / she is obligated to comply with in his / her capacity *qualitate qua*. Therefore, the claims arising from such administrative sanctions should (due to their qualification as estate claims) be immediately satisfied.[66] The liability of the insolvency practitioner may thus go so far as to impose an order on him / her to carry out a soil investigation, if the bankrupt estate is sufficient.[67]

Moreover, environmental-related tax claims can be brought against the debtor by the Dutch Tax Authority. Almost all claims of the Dutch Tax Authority are preferential claims and its claims therefore have a higher ranking than unsecured creditors. If an arrangement is offered to creditors outside of a formal bankruptcy proceeding, the Dutch Tax Authority (not being part of a WHOA proceeding) will in general be willing to cooperate with a proposed arrangement if this plan is addressed to all creditors of the debtor, and if the Dutch Tax Authority gets offered at least double the percentage of what unsecured creditors receive under the arrangement.

In principle, the restructuring plan in a WHOA proceeding must also meet this requirement, but the Dutch Tax Authority may deviate from this according to the Implementing Regulation of the Dutch Collection of State Taxes Act 1990 (*Uitvoeringsregeling Invorderingswet*). In this regard, the Dutch Tax Authority can permit payments that are in line with the 20% rule of the WHOA that applies to small enterprise creditors.[68] Therefore, in some circumstances, the Dutch Tax Authority could vote in favour of a restructuring plan although it does not receive double the percentage of what will be received by the unsecured creditors that are included in a restructuring plan. In addition, the restructuring plan does not have to include all the creditors of the debtor in order for the Dutch Tax Authority to be able to approve it.[69] Taking this into consideration, pursuant to the new WHOA legislation and assuming that the restructuring as proposed will be approved by the

---

63 ABRvS 13 February 2013, ECLI:NL:RVS:2013:BZ1261; and A A J Smelt, "Bestuursdwang, bestuurlijke dwangsom en bestuurlijke boete bij faillissement", *TvI* (2008) 40, paras 7.1 and 7.2.

64 A A J Smelt, "Bestuursdwang, bestuurlijke dwangsom en bestuurlijke boete bij faillissement", *TvI* (2008) 40, para 7.1; and Supreme Court 4 June 2021, ECLI:NL:HR:2021:833, *rechtspraak.nl*, para 2.6.

65 A A J Smelt, "Bestuursdwang, bestuurlijke dwangsom en bestuurlijke boete bij faillissement", *TvI* (2008) 40, para 7.3.

66 Supreme Court 4 June 2021, ECLI:NL:HR:2021:833, *rechtspraak.nl*; and "Hoge Raad schept duidelijkheid over kwalificatie van last onder dwangsom en een last onder bestuursdwang in faillissement", Van Iersel Luchtman Advocaten (8 June 2021), available at: https://vil.nl/nl/blog/hoge-raad-schept-duidelijkheid-over-kwalificatie-van-last-onder-dwangsom-en-een-last-onder-bestuursdwang-in-faillissement.

67 R Mellenbergh, *Bedrijfsovername en milieurecht: een onderzoek naar juridische aspecten van bedrijfsovername en milieu* (Recht en Praktijk, nr 170, Deventer: Wolters, 2009), p 472.

68 The 20% rule is a minimum protection for the "small enterprise" creditors, which entails that they must in principle be paid at least 20% of their claim, unless there are compelling reasons not to do so. A small enterprise creditor is a creditor who employs 50 or fewer persons or who meets the requirements of the Dutch Civil Code, arts 2:395a (micro enterprise) or 2:396 (small enterprise).

69 The Implementing Regulation of the Dutch Collection of State Taxes Act 1990, art 73.3a.2.(2) and (3).

court, claims of the Dutch Tax Authority, including an environmental tax claim, can be partly discharged.

The WHOA is structured so as to provide the debtor with a certain amount of freedom to divide its creditors and / or shareholders into separate classes. However, it sets out a few formalities and requirements. At present, as discussed, most environmental liability claims will be assigned to the unsecured creditor class. Therefore, the possibility to cross-class cram-down this class (and thus the environmental claims) should be considered, as the conditions of the cram-down mechanism will much easier be met in case of an unsecured class compared to a more senior class (for example, the preferred environmental tax claims).

8. What insolvency and restructuring tools are available to deal with or extinguish environmental liabilities and how effective are they?

As set forth above, the WHOA proceeding creates a possibility to restructure the business outside of insolvency by discharging its debts, resulting in a fresh start. Before the introduction of the WHOA, a restructuring outside formal insolvency was only possible with the consent of all the creditors who were affected by the restructuring. However, in a WHOA proceeding a dissenting, impaired creditor-class can be crammed-down by the court if:

- no creditor is worse-off than it would be in case of liquidation;
- at least one impaired "in the money" class votes in favour of the restructuring plan; and
- the absolute priority rule (APR) is satisfied – meaning that a dissenting class has to be paid in full before a more junior class receives any payment or interest.

Since an environmental claim is mostly an unsecured claim (leaving environmental tax claims aside), it will be assigned to the unsecured creditors class, making it fairly easy to cross-class cram-down this class if they dissent to the plan, because as a junior class it is harder to prove that the above-mentioned conditions have not been met. This is the case because a junior, unsecured creditor will often not be worse off in liquidation as it is the last in line to recover from the proceeds and there is seldom any value left after payout of the preferential and secured creditors. Moreover, if the plan adheres to the APR, the more senior dissenting creditor classes will engulf all the proceeds before any proceeds can flow to the junior, unsecured classes.

Another restructuring tool can be found in the suspension of payments proceeding, although this insolvency tool does not often bring about the desired effect of a business continuation, and the proceeding is often converted into a bankruptcy proceeding. The restructuring can be effectuated by the offer of an agreement to the unsecured and non-preferential creditors only. Knowing that the environmental claims are often unsecured, this is yet another way for the debtor to extinguish its environmental liabilities by offering a partial payment under the arrangement.

Regarding environmental claims imposed on the insolvency practitioner, as the new operator of the company in a bankruptcy proceeding, a way for him to disclaim assets that fall within the estate that possibly has environmental liabilities, is to sell these assets "as is where is" and exclude liability. In addition, in case of a wrongful act of the insolvency practitioner – for instance when withholding knowledge of the environmental polluting state of the asset – the buyer can hold him personally liable.[70]

9. What, if any, implications are there for insurance coverage in relation to environmental claims before, during and post-insolvency proceedings?

First of all, in terms of certain Dutch environmental regulations there is the possibility of imposing a mandatory financial security in order to cover the non-compliance with environmental regulations

[70] R Mellenbergh, *Bedrijfsovername en milieurecht: een onderzoek naar juridische aspecten van bedrijfsovername en milieu* (Recht en Praktijk, nr 170, Deventer: Wolters, 2009), para 9.3.3.

if the responsible operator becomes insolvent or bankrupt. A financial security only works for the benefit of the public authorities and not for third parties.[71]

Advantageous forms of financial securities in this respect could be a contract of suretyship or a bank guarantee. In the event of the bankruptcy of a debtor, the competent authority seeking recourse will be able to call on the surety or bank that (financially) guarantees compliance with the environmental obligations of the operator of the company. Secondly, another possible form is the establishment of a pledge or mortgage on items owned by the debtor. In the event of bankruptcy, the pledgee or mortgagee can exercise its rights as if no bankruptcy took place – despite the "general seizure" of all the bankrupt's assets. Secured creditors with a right of pledge or mortgage can therefore take recourse for their claims on the secured asset.[72]

In addition, an insurance contract can possibly be entered into for the sake of third parties suffering from environmental damage caused by the debtor. If an insurance policy is entered into for environmental-related claims and the debtor has been declared bankrupt, the harmed party will have to file its environmental claim for verification. Based on the Dutch Civil Code,[73] the claim of the harmed party qualifies as a preferential claim. However, the claim that the debtor has against the insurer as a result of the materialisation of the insured risk, falls in the bankruptcy estate. Therefore, the harmed party will only receive a payment in the event that higher ranked creditors have received payment in full. Moreover, it is important to point out that if a claim has arisen due to actions of the bankrupt debtor post-bankruptcy, the estate is not bound by this action and therefore not accessible for recourse.[74]

Notice should be taken in this respect of the issue arising from the termination of the insurance contract after a declaration of bankruptcy, which is either done by the insurer based on the right to do so under the terms and conditions of the insurance contract or because the obligations under the contract are not fulfilled by the insolvency practitioner, due to which the insurer has the right to dissolve the contract.[75] However, the insolvency practitioner must also take into account the interests of the insolvent debtor to a certain extent. For liability insurance covering environmental damages, the insolvency practitioner must make a trade-off between the payment-duty of premiums, which dilutes the proceeds of the estate and the importance of the insured risk / object for the estate. Often the estate itself will also have an interest in the continuation of the insurance coverage and in that case, the insolvency practitioner will continue the insurance contract and the payment of its premiums.[76]

If the insurer terminates the insurance based on the terms and conditions of the contract upon the declaration of bankruptcy and the insurance cover is in the interest of the estate, the insolvency practitioner – as the representative of the insurance policy holder – can agree on a run-off cover (*uitloopdekking*). This ensures that claims made against the debtor after bankruptcy, but within the duration of the run-off cover are insured, provided that the alleged wrongdoing was committed within the duration of the insurance period up to the date of bankruptcy. In some cases, the automatic conversion of an insurance contract into a run-off cover is laid down in the terms and conditions of the insurance policy.[77]

10. Are there any cross-border insolvency and restructuring issues that may arise in relation to environmental claims and liabilities?

Environmental claims may arise in an international context on the basis of either international or national law. A general issue could be that some countries have stricter environmental legislation

---

71 *Idem*, para 9.4.2.
72 R Mellenbergh, *Bedrijfsovername en milieurecht: een onderzoek naar juridische aspecten van bedrijfsovername en milieu* (Recht en Praktijk, nr 170, Deventer: Wolters, 2009), para 9.4.3.
73 Dutch Civil Code, art 3:287.
74 M B de Boer and Y L L A M Delfos-Roy, "Insolventie en verzekering" *VrA* 2 (2008), para 5.1.
75 *Idem*, para 1.1.
76 E A L van Emden, "Aansprakelijkheid van curator en bewindvoerder in insolventiezaken", *MvV* (2019), para 3.1.
77 M L Hendrikse, P H J G van Huizen and J G G Rinkes, *Verzekeringsrecht* (5th ed, Wolters Kluwer, 2019), para 26.2.4.

than the Netherlands or, on the contrary, less strict regulations, which means that the thresholds for invoking an environmental liability claim is much higher. In case of a cross-border insolvency proceeding, the insolvency laws of another country may apply. If certain environmental liability claims have to be submitted in a cross-border insolvency proceeding, it is possible that cross-border insolvency regimes have a much stricter system in discharging claims that parties must be aware of. On the other hand, however, it is also possible that the relevant insolvency system is much more lenient in discharging environmental claims, which would negatively affect the creditor and possibly the environment itself in an indirect way.

AlixPartners LLP
Allen & Overy LLP
Alvarez & Marsal
Baker McKenzie
Baker Tilly
BDO
Brown Rudnick LLP
Clayton Utz
Cleary Gottlieb Steen & Hamilton
Clifford Chance LLP
Conyers
Davis Polk & Wardwell LLP
De Brauw Blackstone Westbroek
Deloitte LLP
Dentons
DLA Piper
EY
Freshfields Bruckhaus Deringer LLP
FTI Consulting
Galdino & Coelho, Pimenta, Takemi, Ayoub Advogados
Grant Thornton
Greenberg Traurig LLP
Harneys
Hogan Lovells
Houthoff
Interpath
Jones Day
King & Wood Mallesons
Kirkland & Ellis LLP
KPMG LLP
Kroll
Linklaters LLP
Mayer Brown
McDermott Will & Emery LLP
Morgan Lewis & Bockius LLP
Norton Rose Fulbright
PwC
Quantuma
Rajah & Tann Asia
RSM
Shearman & Sterling LLP
Skadden, Arps, Slate, Meagher & Flom LLP
South Square
Teneo
Troutman Pepper
Weil, Gotshal & Manges LLP

Member Associations

American Bankruptcy Institute
Asociación Argentina de Estudios Sobre la Insolvencia
Asociación Uruguaya de Asesores en Insolvencia y Reestructuraciones Empresariales
Asociación Profesional de Administradores Concursales y Expertos en Reestructuración "Sainz de Andino" (APACSA)
Asosiasi Kurator Dan Pengurus Indonesia
Associação Portuguesa de Direito da Insolvência e Recuperação
Association of Business Recovery Professionals - R3
Association of Restructuring and Insolvency Experts (Channel Islands)
Association of Turnaround and Insolvency Kenya Ltd
Australian Restructuring, Insolvency and Turnaround Association
Bankruptcy Law and Restructuring Research Centre, China University of Politics and Law
Business Recovery and Insolvency Practitioners Association of Nigeria
Business Recovery and Insolvency Practitioners Association of Sri Lanka
Business Recovery Professionals (Mauritius) Ltd
Canadian Association of Insolvency and Restructuring Professionals
Commercial Law League of America (Bankruptcy and Insolvency Section)
FGV Câmara de Mediação e Arbitragem / FGV Arbitration and Mediation Chamber
Finnish Insolvency Law Association
Ghana Association of Restructuring and Insolvency Advisors
Hong Kong Institute of Certified Public Accountants (Restructuring and Insolvency Faculty)
Indian Institute of Insolvency Professionals of the Institute of Chartered Accountants of India
INSOL Europe
INSOL India
Insolvency Practitioners Association of Malaysia
Insolvency Practitioners Association of Singapore
Instituto Brasileiro de Estudos de Recuperação de Empresas
Instituto Iberoamericano de Derecho Concursal
Instituto Iberoamericano de Derecho Concursal – Capitulo Colombiano
International Association of Insurance Receivers
International Women's Insolvency and Restructuring Confederation
Japanese Federation of Insolvency Professionals
Law Council of Australia (Business Law Section)
Malaysian Institute of Accountants
Malaysian Institute of Certified Public Accountants
National Association of Federal Equity Receivers
NIVD - Neue Insolvenzrechtsvereinigung Deutschlands e.V.
Recovery and Insolvency Specialists Association (BVI) Ltd
Recovery and Insolvency Specialists Association (Cayman) Ltd
Restructuring and Insolvency Specialists Association (Bahamas)
Restructuring and Insolvency Specialists Association of Bermuda
Restructuring Insolvency & Turnaround Association of New Zealand
South African Restructuring and Insolvency Practitioners Association
Turnaround Management Association (INSOL Special Interest Group)
Turnaround Management Association Brasil (TMA Brasil)
Xiamen Association of Bankruptcy Administrators (XMABA)

INSOL International, 29-30 Ely Place, London, EC1N 6TD
Tel: +44 (0) 20 7248 3333 Fax: +44 (0) 20 7248 3384

INSOL INTERNATIONAL