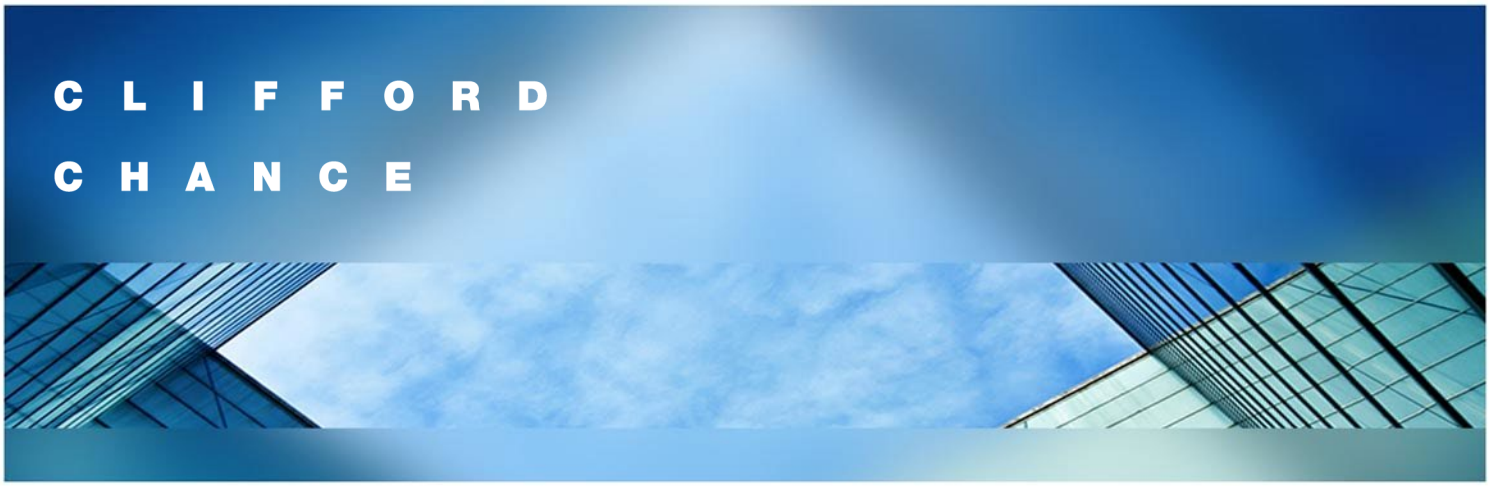

THE DUTCH TEMPORARY ACT TRANSPARENCY TURBO-LIQUIDATION

On 14 March 2023, the Senate (*Eerste Kamer*) adopted the temporary act transparency turbo-liquidation (the "**Act**"), which Act will enter into force on 15 November 2023

Key changes

- Accountability and disclosure obligation *(verantwoordings- en bekendmakingsplicht*)
- Director disqualification (*bestuursverbod*
- Right of inspection (*inzagerecht*)

INTRODUCTION

On the basis of the existing turbo-liquidation legislation, a legal entity without any assets ceases to exist immediately following its dissolution (i.e., at the time of adopting the resolution to dissolve the entity). This also applies to situations in case the legal entity has one or more debts. Liquidation proceedings are not applicable in case of turbo-liquidations, which means that no bankruptcy has to be filed by a liquidator in case the debts are likely to exceed the assets of the entity and creditors do not agree to a liquidation outside the bankruptcy.

The turbo-liquidation legislation was introduced as it was considered desirable to quickly dissolve empty, inactive legal entities, on the one hand (to prevent the abuse of empty inactive entities), and on the other hand, to relieve the registers in which the legal entities are registered. However, the legislation allows mala fide directors to work towards a situation whereby there are no assets at the time of dissolution, as a result of which no accountability is required, while the entity may have one or more debts. Creditors are faced with an obligor who no longer exists and often do not have information to take any legal action.

TIMING

The Act will enter into force on 15 November 2023. The Act has a temporary nature because a special budget was made available due to the expected increase of turbo-liquidations in connection with the outbreak of the Covid-19 virus (despite the pandemic no longer being applicable). This budget is temporarily available for two years, as it is expected that the direct economic effects resulting from the outbreak of the Covid-19 virus will no longer occur from that moment on. However, the Act provides for the possibility of extending the applicability of the measures, but also for a permanent adoption of the Act. The expectation is that the Act shall either be extended or permanently introduced.

KEY CHANGES

Accountability and disclosure obligation *(verantwoordings- en bekendmakingsplicht)*

In case of a turbo-liquidation, the management board of the legal entity is obligated to file the following documents with the Dutch commercial register within 14 days of the adoption of the resolution to dissolve the entity:

- a balance sheet and statement of income and expenses relating to the financial year in which the legal entity was dissolved and the preceding financial year if no annual accounts have been published at the time of dissolution for that year;
- a description of (i) the cause for the absence of any assets at the time of the dissolution, (ii) the manner in which the assets of the legal entity were liquidated and the proceeds were distributed and (iii) the reasons why one or more creditors remained wholly or partly unpaid; and
- the annual accounts for the financial years preceding the financial year in which the legal entity was dissolved if there is a duty to disclose such annual accounts, which has not yet been fulfilled.

The management board of the legal entity is obligated to notify its creditors of such filings. The obligation to draw up the accounts and disclose these shall apply irrespective of whether the dissolved legal entity has any debts. Failure to comply with these obligations may result in a maximum penalty of six months of detention and a fine of the fourth category (EUR 22,500.00).

The accountability and disclosure obligation has been introduced to provide creditors with a better understanding of the current financial situation of their obligor. An assessment can be made whether irregularities have occurred in light of the dissolution or whether there was only an inability to pay. This benefits the assessment whether the dissolution without assets has been correctly applied and, if not, which procedures can be followed by the creditor. For example, (i) reopening of the liquidation, (ii) a liability claim with respect to the management board members or (iii) pursuing a bankruptcy.

Director disqualification (*bestuursverbod*)

In the event of a turbo-liquidation while one or more creditors have remained wholly or partly unpaid, the court may, at the request of the public prosecutor, impose a disqualification on the director(s), in case:

- the director(s) has not fulfilled the aforementioned accountability and disclosure obligation;
- the director(s) has deliberately carried out, or failed to act on behalf of the legal entity, as a result of which one or more creditors have been significantly disadvantaged; or
- in the two years prior to the dissolution, the director(s) was directly or indirectly involved at least two times in (i) the bankruptcy of a legal entity, and/or (ii) the turbo liquidation of a legal entity, whereby the director was personally at fault.

The director disqualification must counter mala fide dissolutions of legal entities without any assets. The disqualification may be imposed at the request of the public prosecutor for a maximum period of five years and shall

ensure that the person concerned cannot be appointed as a managing director or supervisory director of any other legal entities. An appointment despite the disqualification is null and void. In case the ruling has become irrevocable in which the disqualification of the director is imposed, the director shall be removed from the commercial register and the disqualification shall be registered.

The actual policy-maker, the non-executive directors in a one tier board and the former directors are considered equivalent to a director in order to prevent directors from being excluded from the disqualification.

Right of inspection (*inzagerecht*)

If the management board of the dissolved legal entity has not complied with the abovementioned accountability and disclosure obligation, the subdistrict court (*kantonrechter*) may, at the request of each creditor, grant the authority to examine the books and records, documents and other data of the entity.

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