

TALKING ABOUT MONEY: REDUCING GOVERNMENT SPENDING ON BANKRUPTCY PROCEEDINGS OF 'EMPTY BOXES'? A TDABC-ANALYSIS

Introduction

Bankruptcy proceedings (art. XX.89 CEL)

The purpose of bankruptcy proceedings is to place the debtor's assets under the control of a trustee in bankruptcy whose task is to administer the estate, to liquidate the assets and to distribute any proceeds among the creditors.

Complex procedure:

- Workload (activities)
- (Direct) costs

Intervention of trustee and other judicial actors

In practise

Undertakings in a state of bankruptcy have **no significant assets** to distribute among creditors

Special case: bankruptcy proceedings closed for lack of assets (art. XX.135 CEL)

If it turns out that the assets are insufficient to cover the (probable) costs of administering and liquidating the estate, the court may declare the **closure** of the bankruptcy at the request of the trustee or even *ex officio* after hearing the trustee.

The petition may be filed in the insolvency register at any time, even if the inventory has not yet been drawn up.

The decision to close the operations of the bankruptcy proceeding shall entail the **dissolution** of the legal entity and the **immediate closure of the liquidation process** if it is clear that the assets are insufficient to cover the (probable) costs of managing and liquidating the bankruptcy.

The closure ends the mandate of the trustee.

Background and relevance

Problem?

- Bankruptcy proceedings of 'empty boxes' cost the courts a lot of **time** and **effort** and apparently cost a lot of **money** for the State
- **Lump-sum fee trustee** (art. 9 RD 26 April 2018 establishing the rules and scales determining the costs and fees of insolvency practitioners)

Remuneration in case of lack of assets

When the assets are insufficient to cover his fees, the trustee in bankruptcy receives a **lump-sum fee of €1,000** (€1,215.51).

Social relevance?

- Efficient management of scarce human and financial resources of the State require 'empty boxes' to be liquidated at the **lowest possible cost**, while respecting the public interest
- What is the (real) **added value** of appointing a trustee in a bankruptcy case that is closed due to insufficient assets?

Scientific relevance?

- Debate is **lacking objective figures** on the cost of bankruptcy proceedings, which are difficult to obtain
- Applying TDABC to **legal proceedings**, which is innovative

Alternatives (draft law transposing Directive (EU) 2019/1023 into Book XX CEL)?

- **Transfer** from bankruptcy to **judicial dissolution and (immediate) closure** of the liquidation, without appointing a trustee
- Allowing a **cost-benefit analysis** of alternatives, based on TDABC model

Research question and method

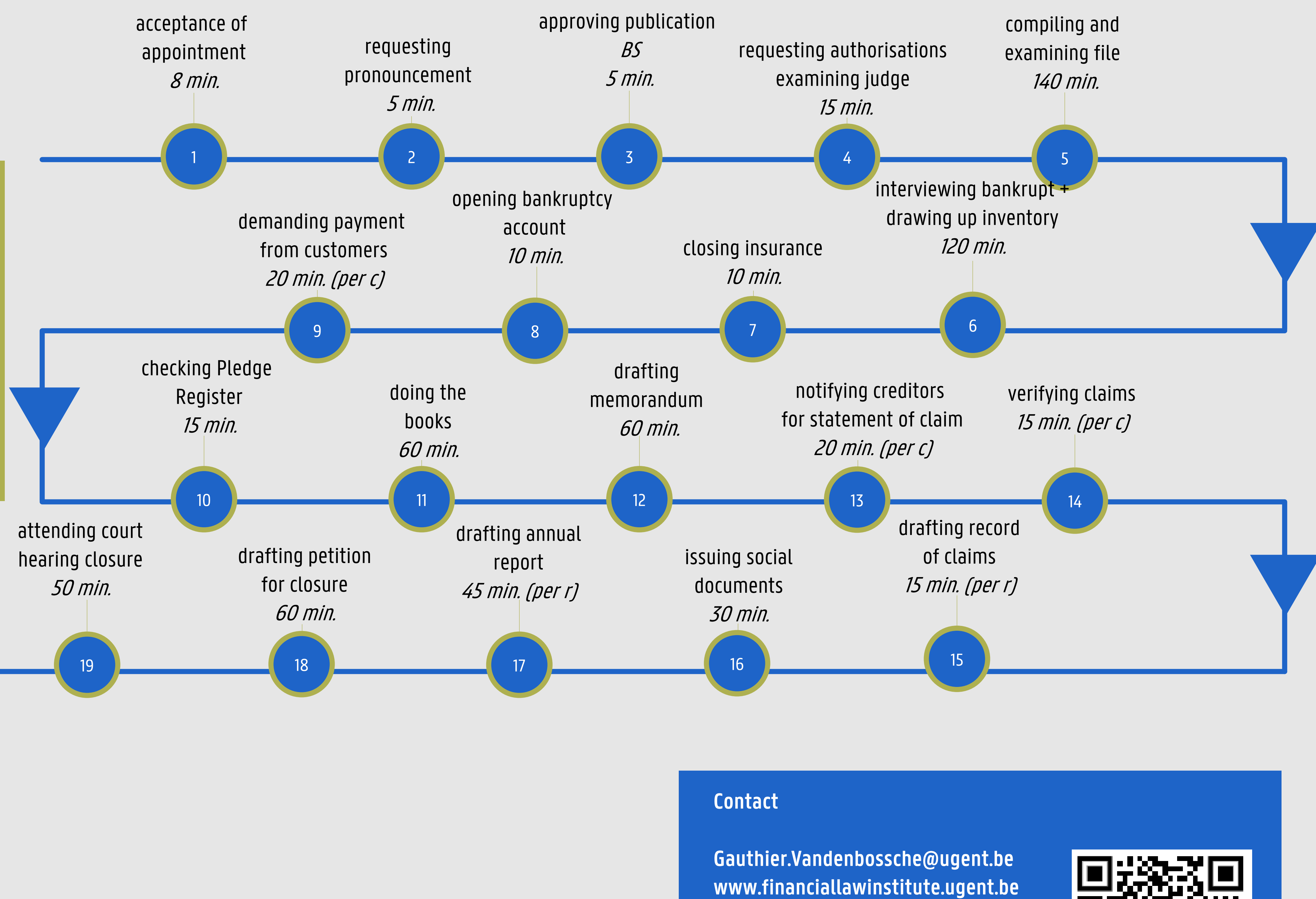
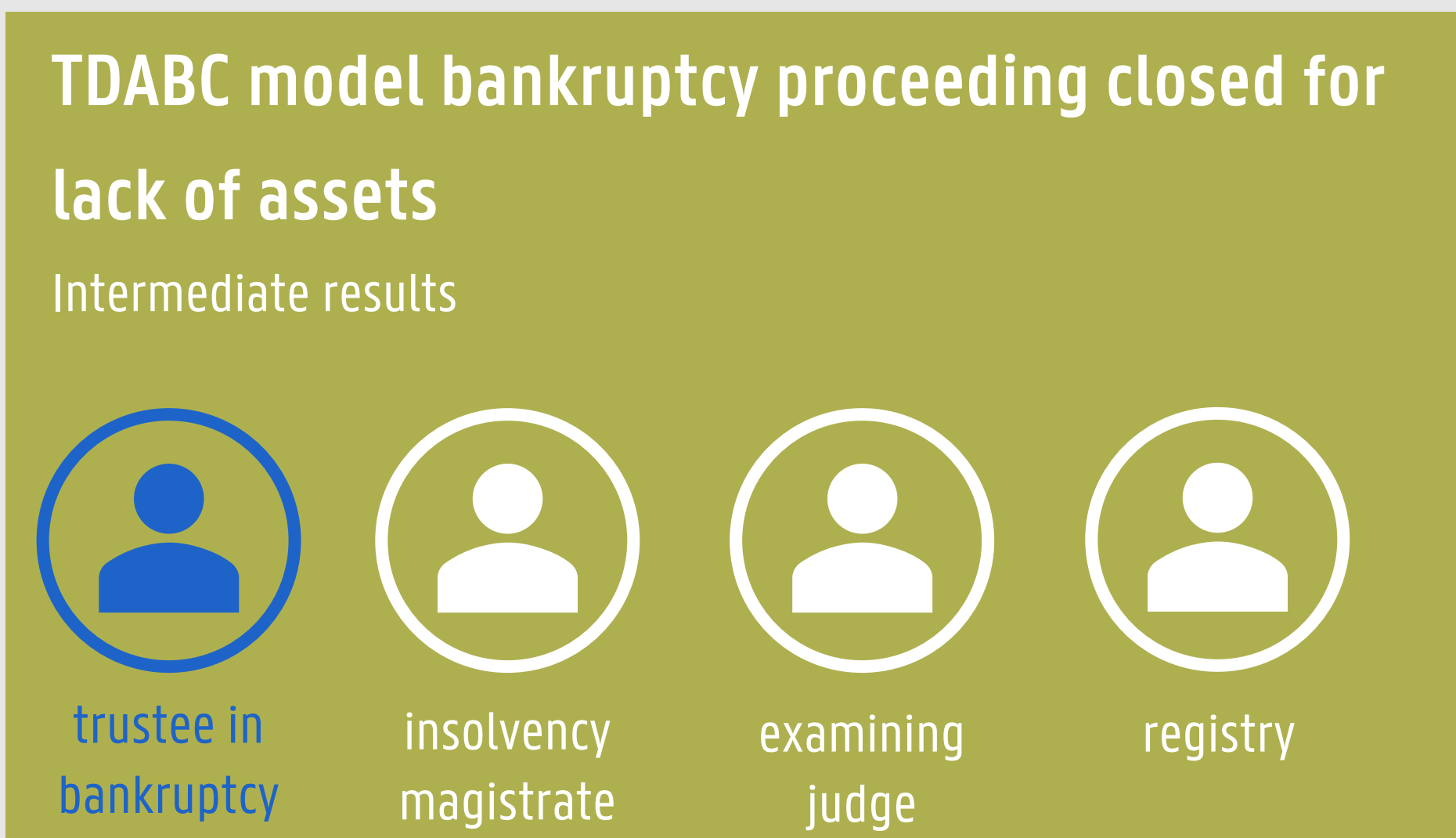
Research question

How does the trustee's lump-sum fee relate to (the cost of) his actual workload and time spent by the trustee in bankruptcy proceedings closed for lack of assets?

Research method

Time-driven activity-based costing (TDABC) model:

1. Identify the various resource groups that perform activities
 2. Estimate the cost of each resource group
 3. Estimate the practical capacity of each resource group
 4. Calculate the unit cost of each resource group by dividing the total cost of the resource group by the practical capacity
 5. Determine the required time for each event of an activity, based on the different time drivers
 6. Multiply the unit cost by the time required by the cost object
- Using **literature study** and **interviews** with trustees in bankruptcy
 - Using **surveys** on activities of trustees in bankruptcy
 - Using **real-life data** based on bankruptcy cases registered in RegSol



t(bankruptcy case closed for lack of assets)

$$= [(8 * X1) + (5 * X2) + (5 * X3) + (15 * X4) + (140 * X5) + (120 * X6) + (10 * X7) + (10 * X8) + (20 * \#c)X9 + (15 * X10) + (60 * X11) + (60 * X12) + (20 * \#c)X13 + (15 * \#c)X14 + (15 * \#r)X15 + (30 * X16) + (45 * \#r)X17 + (60 * X18) + (50 * X19) + (5 * X20) + (35 * X21)] \geq \text{or} \leq \text{€1,215.51}$$

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