

PELS RIJCKEN



Economic recovery after Covid-19

Relevant developments in the Netherlands

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Agenda

01 Developments in insolvency law

02 Developments in small claims, the fall of e-court

03 Netherlands commercial court



Developments in insolvency law

Law of 7 October 2020, Stb. 2020/414; 'Wet homologatie onderhands akkoord', in force as of 1 January 2021

Changes Dutch insolvency law ('Faillissementswet')

Major changes:

Art. 370 section 1: debtor may propose agreement if it is likely he cannot continue to pay his debts

Section 3: declaration with district court and may be inspected by creditors during one year

Section 6: either confidential or public procedure (choice of debtor and/or creditors)

Art. 371 section 1: on request of creditors court may appoint restructuring expert

Art. 383: Court may approve agreement between majority of creditors/shareholders (thus, not all have to agree like before), following a request (art. 369 section 8)

Art. 376: request for cooling off period with a maximum of 4 month

Art. 369 not applicable to:

Section 1: banks and insurers

Section 4: claims of employees (and related claims of pensionfunds: Supreme Court 25 February 2022, DJ 2022/150 with note Verstijlen)

Section 5: within three years previous agreement has been rejected by all classes of creditors or rejected by court



Small claims

Usually instigated by large players like energy companies, (health) insurers, telephone companies (mobile phones) or large online resellers

Court decisions usually by default

Major developments:

According to ECJ courts have to assess ex officio whether unfair contract terms are deployed (which are related to dispute)

E.g. ECJ 11 March 2020, DJ 2020/374 with note Loos (currency clause in lending agreement)

Examples: Supreme Court 12 February 2016, DJ 2017/282 with note Hijma (mobile telephones)

Supreme Court 26 February 2016, DJ 2017/214 with note Krans (penalty clause for subleasing)

Fall of e-court: type of arbitration frequently used for small claims by energy companies etc.

Courts refused to enforce such decisions as it was unclear who took the decision and because of problems with application of EU law regarding unfair contract terms



Netherlands Commercial Court (NCC)

Established to deal with international business disputes on 1 January 2019

- First instance and appeal (based at Amsterdam district court)

- Proceedings in English

- Designed for more complex litigation

- Active case management in consultation with parties

- Specific rules of procedure which are different from other Dutch courts, applicable if Court of Amsterdam has jurisdiction

- Power to decide on interim measures

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