

Litigation - Netherlands

No more Mr Nice Guy! Collecting claims through bankruptcy filings in court

Contributed by **AKD**

July 28 2015

[Introduction](#)
[Bankruptcy procedures](#)
[Comment](#)

Introduction

It is often difficult to collect undisputed claims from foreign debtors. Questions arise such as the following:

- Which national court has jurisdiction?
- Will a ruling have legal force and effectiveness?
- How long will the debt collection procedure take?
- How much will the lawyers' costs and court fees be?

However, Dutch law offers an alternative way to proceed in such cases. Claims against Netherlands-based debtors can be collected through bankruptcy filings. This procedure is also available to foreign creditors represented by Dutch lawyers. Under Dutch law, if a debtor fails to pay its debt, the creditor can file for the bankruptcy of this debtor through a Dutch lawyer.

An eventual declaration of bankruptcy has far-reaching consequences: the debtor loses control of its assets and a (bankruptcy) trustee is appointed to wind up the bankruptcy estate. For this reason, Dutch companies try to avoid bankruptcy at all costs.

Bankruptcy procedures

A petition for bankruptcy must be filed with the court of the district in which the debtor has its statutory seat or, if the debtor is a natural person, the court of the district in which the debtor lives. The Dutch court will schedule a bankruptcy hearing within one month of filing.

At the bankruptcy hearing, two requirements will be assessed:

- It must be established that the debtor has ceased to pay its debts. The petitioning creditor need only give brief evidence of this and need not attend the hearing or be present in the Netherlands.
- It must be established that the debtor has at least two creditors, including one to which the debtor owes a due and payable debt. Commonly, if a debtor has not paid one of its debts, more debts will be outstanding and another debtor should be willing to provide a so-called 'second creditor statement' proving that there is more than one unpaid creditor. If not, the relevant debtor may also have outstanding tax debts, in which case the tax authorities will usually cooperate in the bankruptcy procedure.

If the court rules that both requirements have been met, the debtor will be declared bankrupt at the bankruptcy hearing, unless the petition for bankruptcy is postponed or withdrawn by the creditor.

Taking into account the far-reaching consequences of a declaration of bankruptcy, as the date of the bankruptcy hearing approaches the debtor often proves willing to pay its debt, negotiate a payment arrangement or provide security for proper payment in time. If a payment arrangement is being negotiated, the bankruptcy hearing can be postponed by the petitioning creditor for a maximum of eight weeks.

When seeking a declaration that the debtor is bankrupt, the creditor must be aware of two things. First, payments made after the bankruptcy petition has been filed must be repaid by the creditor to the debtor's trustee. According to Dutch law, payments to a creditor which is aware that a petition for bankruptcy has been filed are deemed to be fraudulent in respect of the other creditors. In order to avoid this complication, the filed petition can be withdrawn and a similar petition refiled, which will involve extra costs but will also secure the received payments and increase the pressure on the debtor.

Authors

Ward Aerts



Ben Reinders



Second, the creditor should be aware that the debtor's bankruptcy is unlikely to lead to payment of its outstanding claims. Usually, the bankruptcy estate accrues only to the banks and the tax authorities. This fact, balanced against the risk for the debtor that the creditor might have the debtor declared bankrupt anyway, creates an interesting playing field in which a payment arrangement can be negotiated.

Comment

Collecting claims through bankruptcy filings has become increasingly popular in Dutch legal practice and the traditional method of collecting claims through a normal court case is losing ground. Although a normal court case may be preceded by pre-judgment attachments, these provide only limited security, as they are lifted by law when the debtor is declared bankrupt. This is a substantial risk in case of insolvent debtors because a regular court case is usually costly and time consuming: it can take more than one year for a judgment giving the creditor title for enforcement to be passed.

The collection of claims through a bankruptcy filing not only involves a fraction of the costs of a normal court case, but will also be effective (if the claim is sufficiently strong) within a much shorter timeframe. Once the petition has been filed, the bankruptcy hearing is scheduled to take place within one month. A fixed payment arrangement can also be established within three months of filing the petition – provided that the debtor is sufficiently solvent to make any payments.

For further information on this topic please contact [Ward Aerts](#) or [Ben Reinders](#) at AKD by telephone (+31 88 253 50 00) or email (waerts@akd.nl or breinders@akd.nl). The AKD website can be accessed at www.akd.nl.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Online Media Partners



© Copyright 1997-2015
Globe Business Publishing Ltd