

NCC and Insolvency



Who are we?

The Netherlands Commercial Court (3 chambers: the NCC District Court, the NCC Court in Summary Proceedings and the NCC Court of Appeal) is a part of the Dutch Judiciary. Ranked among the most efficient, reliable and transparent worldwide. The NCC is based in Amsterdam - a prime location for business, and a gateway to Europe, with a long history of Justice and global business. The NCC uses Dutch procedure, which is highly regarded for its pragmatic approach and efficient operation. Proceedings are in English. Judgments are in English. eNCC, an electronic communication system, is a web portal with secure access through the NCC site (www.ncc.gov.nl), allowing Dutch counsel to initiate an action, check the status and scheduled next steps, and submit and download documents. This gives the NCC the tools to communicate effectively and provide swift and firm guidance throughout the process.

Insolvency-related matters before the NCC

Many insolvency matters are not within the autonomy of the parties and therefore are out of scope for NCC purposes. However, the following types of claims may be within scope as they are not subject to the EU Insolvency Regulation:

- claims made by an insolvency practitioner against a third party to recover money (but not claims against the former managing director)
- an action by a seller to recover goods sold to the insolvent purchaser under a reservation of title
- claims by a creditor against the former managing director of an insolvent company
- an action by a claimant/assignee against a third party with a liquidator's permission

International restructuring and the NCC ("Dutch Scheme")

On 1 January 2021, the Dutch Act on the Confirmation of Private Plans (known by its Dutch acronym "WHOA") entered into force. The Act introduces a pre-insolvency restructuring procedure in the Netherlands, which is inspired by the UK Scheme of Arrangement and the Chapter 11 reorganization proceedings in the United States.

For the NCC to have a role several conditions must be met:

- the Amsterdam District Court has jurisdiction (e.g., company seat is Amsterdam)
- express agreement in writing for the proceedings to be in English before the NCC
- civil or commercial matter within the autonomy of the parties.

The second test may be hard to meet in the NCC context, but since the Netherlands is a rare civil law jurisdiction offering restructuring proceedings in English, perhaps dissenters may be willing to agree for proceedings to be in English before the NCC.

The final test may be the greatest challenge. It's uncertain whether a cramdown arrangement – the examination and approval of the composition plan itself – is within the autonomy of the parties. In any event, related disputes could be within NCC scope. If not, NCC can refer the case to the ordinary Amsterdam courts. In any case, there may be real advantages in testing the waters.

If the conditions are met and a judicial ruling is obtained approving the composition plan, this will be a judgment that is enforceable throughout the EU.

Need to know more on NCC?

If you have any questions, please contact us at NCC@rechtspraak.nl. Or visit our website www.ncc.gov.nl. You can also follow us on Twitter ([@NethComCourt](https://twitter.com/NethComCourt)) and/or LinkedIn.

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