

# NCC and Insolvency

**This document contains the alternate text of the original. This document is intended for people with a visual impairment, such as the blind.**

## Who are we?

The Netherlands Commercial Court (NCC District Court and NCC Court of Appeal) is well positioned to swiftly and effectively resolve international business disputes. Under the proposed legislation, the NCC District Court and NCC Court of Appeal will be based in Amsterdam at the Palace of Justice, which is also home to the Amsterdam Court of Appeal.

The NCC District Court and the NCC Court of Appeal will use Dutch procedure, which is highly regarded for its pragmatic approach and efficient operation. All work will be in English. eNCC, an electronic communication system, will be a web portal with secure access through the NCC site ([www.ncc.gov.nl](http://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

Proposed legislation known as the "Business Continuity Act II" introduces a statutory regime governing composition plans outside formal insolvency proceedings.

It's basically a cramdown for creditors and shareholders who are reluctant to participate in a debt restructuring that is supported by a majority of the creditors and shareholders in the relevant class.

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](mailto:NCC@rechtspraak.nl). Or visit our website [www.ncc.gov.nl](http://www.ncc.gov.nl).

[NCC@rechtspraak.nl](mailto:NCC@rechtspraak.nl)

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