

Justitie



Debt Rescheduling Natural Persons Act (Wsnp)

Introduction

Dutch insolvency law has included a debt rescheduling scheme since 1 December 1998, aimed at natural persons who are facing serious difficulties with payments: the Debt Rescheduling (Natural Persons) Act ('Wsnp'). The Wsnp is intended to prevent situations in which natural persons are endlessly pursued by their creditors if they have ended up in problematic financial circumstances.

The aims of the Wsnp are:

1. to offer debtors the chance of an amnesty of debts;
2. to encourage creditors to be prepared to agree to a composition; and
3. to reduce the number of bankruptcies affecting natural persons.

The debtor's eligibility for the Wsnp

If the debtor and creditor are unable to reach an amicable settlement of the debt, then a natural person (also if he is running a business) can lodge an application with the District Court for the area where he lives to be admitted to the Wsnp. With his application, the debtor must include details showing that he is no longer in a position to pay off his debts on his own, and that he has tried to sort out his debts by means of an amicable debt assistance programme. In addition, the debtor must have acted in good faith when incurring the debts and leaving them unpaid. This is a key criterion of the scheme: a debtor who has not acted in good faith does not deserve to be given a clean slate. The good faith standard provides the Court with a special conduct criterion to apply in its enquiries as to whether the debt situation is the debtor's fault. Partly on the basis of this historical information, the Court must also assess if there is a reasonable fear that the debtor will not abide by the obligations under the rescheduling scheme.

Most important debtor obligations

- The debtor may not allow any further debts to arise.
- There is an obligation to generate as much money as possible to satisfy the debts. This means in practice that there is an obligation to work or look for work, unless the Examining Judge waives this for special reasons.
- The debtor must inform the Court-appointed administrator (trustee) about any matters that might be important for the statutory debt rescheduling scheme.
- The debtor must pay all income in excess of the exempted amount to the Court-appointed administrator.
- The reasons for the debt arising must be eliminated.

Debtor's budget

All Courts use the same method of calculation (based on the Act) to work out what proportion of income the debtor can retain each month to live on. This amount is usually around the level of social security benefits. Generally speaking, a debtor will therefore have to cope with a limited budget for three years. The Court-appointed administrator can also sell any valuable goods that the debtor does not actually need.

Supervision of the debtor

When the Wsnp is declared applicable to the debtor, the District Court appoints an Examining Judge and an administrator. The Examining Judge's duty is to supervise the correct implementation of the statutory duties by the administrator.

The administrator, in turn, supervises the debtor's compliance with his

obligations arising under the debt rescheduling scheme. The administrator will visit the debtor at home and inspect all of the debtor's mail that is delivered to him as a result of a postal redirection. The administrator is also responsible for managing and liquidating the debtor's assets and implementing the repayment plan. The Court has full discretion in the appointment of administrators, although some qualitative requirements are imposed within the framework of the granting of grants. In addition to a salary determined by a legislative Decree, the administrator in a debt rescheduling scheme also receives a subsidy grant, which is also specified in a Decree. This grant is issued by the Legal Aid Council in 's-Hertogenbosch.

Creditors

The contents of the Court's decision admitting the debtor to the Wsnp is published in the State Gazette and a Central National Insolvency Register (CIR), so that creditors can check whether their debtor has been admitted to the Wsnp, and who the administrator is. At that point, creditors can approach the administrator with details of their claims, so that they can be dealt with during the so-called 'verification meeting'. Only then will the debts have a chance of being settled if funds are distributed at the end of the Wsnp programme. If a creditor has imposed an attachment on property, this will lapse at the point when a debtor is admitted to the Wsnp.

Clean slate, or agreement with the creditors

At the start of the Wsnp programme, the Court will set the duration of the programme, which is generally three years. About one month after the expiry of that period, the Court checks to see whether it can agree to award a clean slate or whether the duration of the programme needs to be extended. The

debt rescheduling programme can also, however, be terminated by shortening its term. This will happen if there are no reasonable further prospects of the debtor being able to meet his obligations, either entirely or partially. The notion behind this is that if it is anticipated that no payment will be made to the creditors, holding a verification meeting and a final distribution will be pointless, and so the Court has to be able to terminate the application of the rescheduling programme without these time-consuming and costly procedures. Because there is no expectation of any distribution, the creditors are not disadvantaged if the term of the programme is shortened. Also, the ratification of an agreement entered into during the rescheduling programme will terminate the programme by operation of law.

Interim termination of the Wsnp

Section 350 of the Dutch Bankruptcy Act also provides the Court with an option of terminating a rescheduling programme at an interim stage, if the Court considers that there are good reasons for doing so. An exhaustive list of such grounds is included in the Act. Interim termination may be due to positive factors: the claims might have been settled or the debtor might be in a position to resume his payments. On the other hand, the debtor's negative attitude towards the rescheduling programme or the creditors might also be a reason for terminating the scheme. In such a case, where the debtor fails to abide by his obligations under the Wsnp, current law decrees that the debtor will be declared bankrupt by operation of law. The application of the debt rescheduling scheme also comes to an end if the debtor is declared bankrupt during the course of the rescheduling programme. It may happen that the debtor allows new debts to arise in the course of the scheduling scheme. If he leaves these debts unpaid, he can be declared bankrupt in relation to these debts, which will not be covered by the rescheduling scheme.

Finally, the Court may also decide to terminate the rescheduling programme if the debtor dies.

The most significant amendments to the Wsnp as at 1 January 2008 for debtors and creditors

At the same time as an application is lodged under the Wsnp, there will also be a facility for invoking a 'preliminary injunction' and/or a 'compulsory debt scheme'. These applications will be dealt with before the application for admission to the Wsnp is considered. A preliminary injunction offers a debtor protection against any impending threat of the disconnection of gas, water or power, notice of termination of lease, eviction, or termination of healthcare insurance. The Court may impose a preliminary injunction for a maximum of six months. This means that during this period an amicable settlement with the creditors may still be reached. A compulsory debt scheme or mandatory agreement involves the debtor asking the Court to impose a composition on any unwilling creditors who are unreasonably refusing to cooperate.

Conflicts need to be solved and lawbreakers must be brought to justice. The Ministry of Justice aims at accessible, efficient and independent administration of justice. It is also committed to alternative forms of settling disputes such as mediation.

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