

From indebtedness to a fresh start; an evaluation of the Dutch Debt Adjustment Act for natural persons

Summary

The Dutch Debt Adjustment Act entered into force 1 December 1998. It was introduced as a law through which overindebted natural persons (i.e. consumers and self-employed persons) can get a 'fresh start' from their debts. The court rules on whether applicants meet the requirements of the Act. Debtors can apply for a legal debt adjustment procedure, if they are unable to reach a voluntary settlement with their creditors. In a voluntary arrangement debtors can request the help of professional debt counselling agencies. These organisations are specialised in negotiating repayment plans with creditors.

The Debt Adjustment Act for natural persons is embodied in Chapter 3 of the Insolvency Act. The debt adjustment procedure has three objectives. The first is to give individuals burdened with debt the possibility of a 'fresh start'. The debtor has to place a part of his income at the disposal of his creditors for a period of time, usually three years. In addition, the debtor must sell his non-exempt goods. Except to the extent it is exempt, the debtor's property is used to pay off creditors. Debts not paid during the three years are 'discharged' by the court, meaning that the creditors cannot claim repayment of the remaining debt. The second purpose of the Act is to encourage voluntarily negotiated debt settlement. Creditors are believed to prefer a voluntary arrangement because the legal settlement is financially less attractive for them. The third objective is to reduce bankruptcies of natural persons.

The evaluation study describes the functioning of the voluntary and legal debt adjustment procedures and examines to what extent the objectives of the Debt Adjustment Act for natural persons are being achieved. The study revealed that in the first two years 15,254 debtors (11,597 households) entered the legal debt adjustment procedure. Nearly 70% of the applicants were aged 25 to 45 years, 60% received social benefits, and on average their income was low. A comparison between the applicants and the population at large showed that single households and one-parent families are overrepresented. The mean household debt was HFL 60.000. The mean household debt of those enrolled in the legal procedure was much higher than for applicants for the voluntary procedure.

The tie-up between the voluntary and legal procedure shows some weaknesses. The form that applicants have to send to the court is not always filled in properly and lacks essential information needed by the court to make a decision. Second, if debtors receive social (debt) counselling, the counselling may stop when they enter the legal procedure. Third, the procedures have different ways of calculating the part of the income that is exempt from the payment plan. Fourth, the information given to debtors and creditors about the legal procedure is not sufficient. Finally, there is a specific group for which the tie-up is not going well: the self-employed. They often cannot find professional debt-counselling services that can help small companies. As a consequence, self-employed often enter the legal procedure without having tried voluntary settlement of their debts.

Because the Act took effect only recently, the evaluation study cannot draw final conclusions about how well the objectives of the law are being achieved. Because the legal procedure usually takes three years it is still unknown how many persons will get a 'fresh start'. And if they do manage to get a 'clean slate', it is questionable whether they will stay debt free for long because of a lack of social counselling in the legal procedure.

With respect to the second objective - the legal procedure aims to strengthen voluntary settlement - the Act has been counterproductive. Some creditors, or some creditors in some cases, consider a legal settlement to be more attractive than a voluntary one. Finally, the third objective seems to have been achieved. The bankruptcies of natural persons show a sharp decrease between 1998 and 1999, compared to the preceding years and compared to the decline in bankruptcies of artificial persons.

Van schuld naar schone lei; evaluatie Wet Schuldsanering natuurlijke personen

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