

Covid-19 calls: Robert van Galen at NautaDutilh in Amsterdam

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NautaDutilh Partner Robert van Galen (Credit: NautaDutilh)

“Insolvency legislation on its own will not do the trick.” GRR speaks to NautaDutilh partner **Robert van Galen** in Amsterdam, the Dutch representative to UNCITRAL Working Group V and a past president of INSOL Europe, who says the Netherlands’ new restructuring law will solve some of the problems presented by the covid-19 pandemic, and explains why it’s important the European Union remains united through the crisis.

Is your firm prepared for the wave of restructurings coming down the line?

We are pretty busy and we don’t know how long it will stay that way, although

M&A transactions are lagging a little bit at the moment. We have strengthened our restructuring and insolvency team, and we have also received a lot of regulatory inquiries with respect to state aid, which we are focusing on as well. We have got a pretty strong financial practice in our firm and there will definitely be work for them.

In which industries are you seeing the most immediate problems and how do you plan to deal with it?

Obviously, leisure and restaurants and industries like that are being affected. We are not very much involved in those types of cases because we are a relatively large firm. We have received a lot of questions about the measures the government is taking, and our labour department has had an increase in work because there are a lot of companies that are asking for support for wages through the government’s subsidy regulations.

What are the long-term effects going to be?

The Netherlands is probably going to have a new restructuring law soon that will facilitate reorganisation plans. I think that may help solve quite a lot of problems, but we also need a law that will allow businesses to postpone payments of interest and principal amounts due on loans to creditors. That is a difficult issue because when one company delays a payment, its creditor should not go bankrupt as a result. It will be a balancing act.

What measures have been introduced in the Netherlands to deal with the crisis?

The most important measure is the government support in terms of paying wages for companies that have had to send their employees home and are unable to pay their wages because there is no turnover. Tax measures have been introduced too, meaning it is now easier to get a postponement for paying your taxes. There are also now several financing options under a €10 billion loan guarantee scheme to address liquidity issues for SMEs and larger businesses. There really is a whole patchwork.

What more could the government be doing to assist companies? Is there anything they getting wrong or failing to understand?

I think on the one hand, the government is in a very difficult position, because it is very hard to predict what is going to happen, and how long the lockdown or a semi-lockdown will continue. It is important to give businesses the chance to recover.

On the other hand, the Dutch state is rich so there is room for support, and an important thing is to keep the economy going without endangering the health of the people. There will be several support measures, but I think right now it is bit early to really plan them well. The government is working on legislation, and there are support measures that are not in bills, but have been introduced as governmental orders.

I think that we will need more funding when we emerge from this. For the time being everything is more or less frozen, but once we get out of this we will need a lot of measures. A lot of businesses will probably not survive.

What I would like to see enacted is an improvement in the insolvency legislation that will enable companies to seek suspension of their payments. There is legislation, but it is not effective because it does not include secured claims or priority claims and because those are the most important claims, it doesn't help. The suspension of payments chapter of the bankruptcy act should be improved.

There is also legislation pending on the improvement of reorganisation plans, and that will also be an important pillar. It is a law on the confirmation of out-of-court restructurings, but it is not quite out-of court because the court has to approve the reorganisation plan and parties will also be able to get injunctions from the court.

Does UNCITRAL have any initiatives in the pipeline?

I don't think UNCITRAL is involved in proposals for reorganisation laws related to the coronavirus crisis. The working group has just finished its model law on insolvency-

related judgments, and it is now working on projects relating to SMEs. After that it is going to consider issues that have nothing to do with the coronavirus, like asset tracing. The SME project has been going on for quite a few years. It is working to improve insolvency laws for micro, small and medium-sized businesses, but there is nothing specifically for the coronavirus crisis.

Is there anything you would like to add about the covid-19 situation?

I have two observations. First of all, insolvency legislation on its own will not do the trick because insolvency legislation is geared at single companies and what we have here is a whole economic fabric that we have to save. So that is a rather fundamental difference, and it makes it complicated.

The other issue is about the importance of the support of the Southern European States. There is currently a discussion going on but I think it is very important to keep the cohesion of the European Union, and to try not to be destructive. I'm basically talking about the richer states in the European Union supporting the poorer states that cannot give enough support to their businesses. I think the EU has taken measures already, but it is an ongoing process. They've made half a trillion available now on the European level. That is important.