Geschilbeslechtingsdelta midden- en kleinbedrijf

Over het optreden en afhandelen van (potentieel) juridische problemen in het midden- en kleinbedrijf

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Summary

Dispute Settlement Delta MKB
On the occurrence and settlement of (potential) legal problems in small and medium-sized companies

This report concerns Dutch small and medium-sized companies (MKB), the companies with at most 99 employees who jointly make up little over 99% of the companies in the Netherlands. The difficulties experienced by these companies are the main focus of the investigation. The research questions were:

1. What is the nature and frequency of the problems experienced by small and medium-sized companies? With whom are these companies experiencing these problems and how can the differences in the nature and frequency between the companies be explained?
2. How do companies deal with problems and which legal assistance providers do they engage in the process? How can the differences between companies be explained in this context?
3. How do companies end their problems and how do they assess the performance of the legal assistance providers engaged by them?

Two surveys were used to answer these research questions. Both surveys were presented to the companies panel of EIM, a panel that includes the decision-makers of approximately 2,300 companies. The first survey concerned the extent to which companies engaged the services of legal assistance providers in 2006 and the serious problems they faced in that year. After it became clear that this provided a rather broad definition and that the companies reported many problems of presumably minor importance, it was decided focus the second survey entirely on the (potentially) legal problems. This group of problems was explicitly identified as the subcollection of serious problems that could have led to legal proceedings or actually led to them. This second survey also related to problems experienced in 2006. Contrary to the first survey, the second survey enquired after the nature of the other party to the dispute and the provider of legal assistance in this context.

This report consists of two parts. The first part presents the results of this survey in a descriptive manner. The second part, which is more explorative in nature, seeks an explanation for the differences between companies concerning the chance of encountering problems and the frequency of these problems; the choice of solving problems personally and the choice for engaging a lawyer and/or legal advisors when (potential) legal problems have become a reality. This summary relates exclusively to the first, descriptive part. Reference is made to Chapter 7 for a summary of the results of Chapters 4 to 6.

Incidence and frequency of problems

Small and medium-sized businesses regularly face serious problems, but these problems are not all so serious that they could have led or did lead to proceedings and can be designated as (potentially) legal in nature. While 1,298 (61.9%) of the 2,097 of the surveyed companies experiences serious problems in 2006, this was only the case with respect to 660 (37%) of the surveyed companies as regards the (potential) legal problems. In addition, companies that had problems in 2006 were
confronted with considerably more serious problems than (potentially) legal ones (on average 12.7 and 5.7 problems per company that experienced problems).

The most frequent serious problems were problems concerning payment of goods supplied or services provided (45.4% of the serious problems); the quality, quantity or delivery time of purchased goods or services (16.5% of the serious problems); and the quality, quantity or delivery time of goods supplied or services provided (9.2% of the serious problems). The order is comparable with respect to (potentially) legal problems. The largest group of (potentially) legal problems relates to payment of goods supplied or services provided (46.8% of the – potentially – legal problems); followed by problems related to quality, quantity or the delivery time of goods or services purchased (17.8% of the – potentially – legal problems); and problems related to serious forms of crime or fraud (11.3% of the – potentially – legal problems). With respect to both the serious and the (potentially) legal problems, approximately three quarters of the problems concern (payment of the) supply or purchase of goods or services.

The companies that experienced (potentially) legal problems were asked after the nature of the other party. Of the 3,747 (potentially) legal problems reported in 2006 by the respondents 54.6% consisted of problems with other companies; 19.5% of problems with private citizens; 6.7% of problems with the government; 4.9% of problems with employees and 14.2% of problems with other parties (other organisations and the overlapping category 'legal entities other than the company's own employees', which relates exclusively to crime and fraud).

There are significant differences between the companies as regards the incidence and frequency with which they are faced with serious or (potentially) legal problems. To a certain extent, this difference in encountering problems can be explained on the basis of the fact that the companies already had certain other problems that gave rise to new problems or caused them in whole or in part. For example, there is, statistically speaking, a significant relationship between the frequency of (potentially) legal problems about the quality, quantity and delivery time of goods or services purchased and payment of these goods or services. This relationship would seem logical: if a party is not satisfied with the delivery, it will be less likely to pay for it (in full). There is also a connection, which as regards incidence and frequency also occurs with respect to serious and to a lesser extent also with respect to (potentially) legal problems, between the problems concerning quality, quantity and delivery time of both supplied and purchased goods and services. This connection is conceivable as well: after all, a company depends on the performance of the supplier for the production of its goods or services. If there is a defect, this will soon have consequences for the relevant company.

In order to explain the differences between the companies, the extent of coherence between the incidence of the both the serious as well as the (potentially) legal problems and certain background characteristics of the companies are examined as well. It followed from the above that companies which in 2006 were confronted with relatively few types of problems were companies that:

- were active in the 'other services' business sector;
- employed one or two employees;
- had been in business for 10 to 15 years;
- consisted of a single establishment;
- were entirely independent;
- whose legal form was a one-man business.

Companies that in 2006 were faced with relatively many serious types of problems, were companies that:

- were active in the 'construction' sector;
Companies that were faced with relatively few (potentially) legal types of problems, were companies that:
- were active in the 'accommodation' or 'other services' business sectors;
- employed one or two employees;
- consisted of a single establishment;
- were entirely independent;
- whose legal form was a one-man business.
- were not affiliated with any trade association.

Companies that were faced with relatively many (potentially) legal types of problems, were companies that:
- employed five or more employees;
- consisted of three or more establishments;
- were not entirely independent;
- whose legal form was a private company with limited liability;
- were affiliated with a trade association.

Solutions

Companies that are faced with problems have various options for dealing with them. The summary below mainly concerns the legal assistance engaged by companies. This does not exclusively concern the legal profession: legal services providers also include accountants, advisors, mediators, disputes committees, the courts, legal expenses insurance [companies], trade organisation, bailiffs, collections agencies and the police. Other subjects that will be dealt with relate to opinion of the respondents concerning these providers of legal services; concerning the decision not to engage legal assistance; concerning the usual termination of (potentially) legal problems; and finally, the publication, or threat thereof, of these problems to put pressure on the other party.

Engaging legal assistance in 2006

Lawyers were the group of legal assistance providers that were mostly engaged by the largest group of companies in 2006, irrespective of the question whether this was for a problem or not: 534 companies (25.5% of all companies) did so in 2006. Lawyers were, in this respect, followed by the trade associations (engaged by 525 companies or 25% of all companies), legal advisors (engaged by 420 companies, 20% of all companies) and court bailiffs (engaged by 364 companies, 17.3% of all companies).

When looking at the frequency of engaging legal assistance in the case of serious problems, the order looks different. In that case, the main service providers are court bailiffs: in 2006, they were engaged 2,366 times (23.5% of all engagements). They are followed by trade organisations (21.9% of all engagements); lawyers (16.9% of all engagements); and legal advisors (13.1% of all engagements).

The aforementioned figures relate to all companies in the first survey, irrespective of whether they had serious problems. The group of companies that did not experience
serious problems, but nevertheless engaged legal assistance is considerable: 37.9% of the 799 companies without serious problems did so. The trade associations are favourite among this group of companies (31% of engagements by this group), followed by legal advisors (18.2% of engagements); the police (16.8% of engagements) and lawyers (13.3% of engagements). The nature of reliance on service providers is, however, different, as the trade associations and legal advisors are usually engaged to provide information and not for assistance with an actual problem.

**Provision of legal services with respect to (potentially) legal problems**

The incidence and frequency of engaging legal assistance providers look different when the focus shifts to the partial collection of (potentially) legal problems. As a percentage of all companies 12.4% engaged the services of a lawyer, followed by 8.9% who engaged a collection agency; 8.5% who went to court and 7.0% who engaged the services of a court bailiff. The court is quite frequently engaged: of the companies with (potentially) legal problems 22.9% did so.

As regards the frequency of engagement in the event of (potentially) legal problems in 2006, the collection agency was the most important legal services provider (20.9% of all engagements), followed by lawyers (18.2% of all engagements), court bailiffs (18.1% of all engagements) and the courts (9.0% of all engagements). The differences between the companies in incidence and frequency with which they engaged legal assistance providers are considerable. To a certain extent, engaging legal assistance providers can be explained on the basis of the fact that the relevant companies had already engaged legal assistance providers that led to, caused (in part or in whole) or necessitated the reliance on another legal assistance provider: for example, court bailiffs without an enforceable order from the courts can do little and reliance on the courts often starts with the court bailiffs. Such connections can be found both in the correlations between engaging and not engaging legal assistance providers and those between the frequencies with which this occurred. Part of the explanation of the differences between the companies, the extent of coherence between the incidence of (potentially) legal problems and certain background characteristics of the companies are examined as well. The identified coherence between the incidence of engaging legal assistance providers and the background characteristics of the companies mainly relate to lawyers, the police and the courts. The background characteristic that displays most coherence with the incidence of reliance on legal assistance providers is the legal form of the company.

**Opinion of the respondents**

The respondents were asked after their general opinion about the operation of the service providers engaged by them. The average valuation of the functioning of the legal assistance providers in general or with respect to the role they played in ending the (potentially) legal problems is quite high: 3.5 to 3.6 out of 5. This does not detract from the fact that there are considerable differences in the valuations of each legal assistance provider, and also in the spread of the opinions per legal assistance provider. The trade organisations and the disputes committees (a 3.9 each) and the legal advisors (a 3.8) score relatively high with respect to the general question after their operation. In particular the courts, the police and arbiters score relatively low (each scoring 3.2). When asked for the opinion concerning the role of the legal assistance providers in ending the (potentially) legal problems, the accoun-
tant (4.2), the mediator and the trade organisations (both 4.0) and score relatively high. The police (2.9) and collection agencies (3.4) score relatively low.

**Not engaging legal services**

Attention was also paid to not engaging legal services in the event of (potentially) legal problems. In the event of problems with other companies concerning payment of goods supplied or services provided no help was most often sought: 61 companies, a quarter of the number of companies that were confronted with this kind of problems indicated not to have engaged legal services in 2006. The (potentially) legal problems whereby companies most often did not engage legal services, concerned problems with other companies concerning the quality, quantity or delivery time of purchased goods or services. 59 companies (with 553 of such problems) of those participating in the investigation did not engage assistance with respect to this type of problem in 2006. They constituted three quarters of the companies confronted with these problems.

The most common reason for not engaging legal services was that the parties had already resolved the (potentially) legal problems themselves: one third of the reasons provided related to this. Other relatively often occurring reasons were the costs (time and money) involved in engaging legal assistance providers. The fact that nothing could be recovered from the other party or that the problem could not be resolved were less important reasons. It also did not happen often that the respondents indicated not to consider the matter important: only 7.5% of the explanations provided read as such. This is emphasised by the fact that the respondents indicated only rarely not to have considered engaging legal assistance providers.

**Customary termination of problems**

When asked after the manner in which companies customarily resolved the (potentially) legal problems in 2006, 58.7% of the respondents stated to customarily do so by means of an agreement with the other party. This does not mean that 58.7% of the (potentially) legal problems results in an agreement, because the underlying number of problems have not been taken into account. It nevertheless provides an indication of the importance of the agreement as end point of (potentially) legal problems. A court decision seems to be the second most important way of ending (potentially) legal problems.

**Publication of problems**

A solution that was also considered within the context of this investigation, concerns seeking publicity concerning the problem to put pressure on the other party. Generally speaking, publication is not often applied. 13.9% (a total of 277 times) of the 660 companies with (potentially) legal problems proceeded with publication in 2006. Most companies did so when the other party was another company. The form of publication applied most often was warning colleagues and companies in the same sector. 88 companies of the 92 companies that in 2006 proceeded with any form of publication, applied this method.

The group of companies that proceeded with publication in 2006 is smaller than should have been expected on the basis of the expectations concerning the functionality of publication: depending on the type of problem, between 29.7 and 54.8%
of the respondents was of the opinion that publication would put pressure on the other party and between 19.8 and 58.4 was of the opinion that publication would lead to a swifter resolution of the problem. It is noted in that respect that the respondents indicated to worry more about their own reputation than that they expected the other party to worry about their reputation. Possible publication of the problem could also damage your own reputation, and that is perhaps a reason for the fact that it is not often applied.