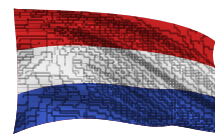


Dutch bank ATB enters insolvency due to sanctions



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On Friday 22 April 2022, the Amsterdam District Court opened bankruptcy proceedings in respect of Amsterdam Trade Bank NV (ATB) on the application of ATB and after hearing the Dutch Central Bank (DNB). Toni van Hees and Job van Hooff from the Stibbe law firm in Amsterdam were appointed by the court as administrators. They have been assigned with the task to liquidate the bank for the benefit of the depositors and other creditors.

ATB's bankruptcy, the first of a Dutch bank since 2009, is peculiar, because it was not caused by a deteriorating financial position. It is a direct consequence of the sanctions packages announced by various jurisdictions in response to the Russian invasion of Ukraine. ATB has a Russian connection: the Russian Alfa Bank holds a majority stake of 78% in ATB and part of the ultimate beneficial owners (UBOs) of ATB are sanctioned Russian natural persons. ATB was particularly affected by the sanctions imposed in the United Kingdom and the United States. In these sanctions packages, ATB, as a subsidiary of Alfa Bank, was directly sanctioned, as a result of which certain companies and individuals from these countries were no longer allowed to do business with ATB as of 24 April and 6 May respectively.

As a result, several service providers terminated their services to ATB or threatened to do so in the near future. Several employees also terminated their contracts with ATB, or threatened to do so in the short term. This had far-reaching consequences for the business operations of ATB and meant that ATB was no longer able to perform its core activities, even though ATB is Netherlands-based and it does not fall under



EU sanctions. Due to further terminations of services around 24 April and 6 May, ATB would no longer have access to essential systems, personnel, information and services to meet its obligations towards its depositors and other counterparties. Therefore, it saw no other option than to apply for its bankruptcy.

Since the opening of the bankruptcy proceedings, Van Hees and Van Hooff in their capacity as court appointed administrators have been able to secure exemptions from the US and UK sanctions packages. Both the US authority OFAC and its UK counterpart OFSI granted licenses to facilitate the administrators in fulfilling their statutory tasks. Meanwhile, Van Hees and Van Hooff sought and obtained an injunction from the Amsterdam District Court against Microsoft. Microsoft had stopped its services to ATB prior to the bankruptcy, thus blocking the administrators from access to crucial systems, like company emails and cloud services. The court considered that the administrators, by order of the court and in accordance with the rules of the Dutch Bankruptcy Act, perform a statutory duty. Pursuant to Article 105b of the Dutch Bankruptcy Act, they must have access to the entire records of ATB, including the records

located in the cloud. The court therefore ordered Microsoft to provide the administrators with access in the manner requested by them on penalty of €10 million per day with a maximum of €100 million.

The administrators continue to face operational issues that are caused by sanctions, even though they are performing their tasks for the benefit of the more than 23,000 depositors holding accounts with ATB and who are Dutch and German nationals, many of whom are pensioners. Meanwhile, many of these positions have been taken over by the Dutch Deposit Guarantee Scheme (DGS). Directly after the bankruptcy order, the Dutch Central Bank DNB activated the DGS and, as at the time of writing, DNB has already paid out over €500 million to depositors.

It is noteworthy that the interest accruing over that claim and other claims after the date of bankruptcy is eligible for verification, according to a special provision to that effect. This rule only applies to bankruptcies of credit institutions, in deviation from the general rule under Dutch bankruptcy law, and which came into force on 2 March 2022, seven weeks before the ATB's bankruptcy. ■



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