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Companies on their Paths to Justice How Small and Medium-Sized Enterprises in the Netherlands Deal with Potential Legal Problems

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1. Introduction

The late CEO of Apple, Steve Jobs, took Apple's business very personally. Walter Isaacson, Jobs' biographer, relates in his book how this exceptionally influential innovator of the computer and communications industry never got over his anger when Microsoft's Bill Gates, with whom he was working at the time to develop software for Apple's Macintosh computer, simply copied the basic ideas of the Macintosh graphical user interface – with windows, icons and point-and-click navigation – and turned it into Windows. It was November 1983, the dawn of a new computer age, and Jobs gave Gates a piece of his mind: “You're ripping us off!” he shouted. “I trusted you, and now you're stealing from us!”¹ Given that Apple had based the Macintosh operating system on ideas first developed by Xerox PARC, this was a rather bold claim to make. Nevertheless, a string of lawsuits was soon to follow.² In 2010 more or less the same thing happened with Apple's iPhone, this time with Google as the proverbial bad guy. Isaacson recounts how Jobs told him about a lawsuit that Apple had just started against smart phone maker HTC for copying several features as well as the look and feel of the iPhone. This lawsuit was in no small part indirectly aimed at Google, the company that produces Android, the operating system for smart phones and tabloid computers that HTC used. ‘Our lawsuit is saying, “Google, you fucking ripped off the iPhone, wholesale ripped us off.” Grand theft. I will spend my last dying breath if I need to, and I will spend every penny of Apple's \$ 40 billion in the bank, to right this wrong. I'm going to destroy Android, because it's a stolen product. I'm willing to go to thermonuclear war on this.’ When Google's CEO Eric Schmidt tried to settle the matter a few days later, Jobs told him in colourful language that Google was in the thieving business: “We've got you red-handed,” he told Schmidt. “I'm not interested in settling. I don't want your money. If you offer me \$ 5 billion, I won't want it. I've got plenty of money. I want you to stop using our ideas in Android, that's all I want.”³

In the two cases presented above, the business conflicts Apple had with other companies quickly turned into lawsuits. Jobs was not interested in settling, nor in money, but he wanted his competitors to stop using his ideas, probably also because he was infuriated by the ugliness with which he thought they

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1 W. Isaacson, *Steve Jobs*, 2011, p. 115.

2 Apple lost the lawsuits and in the aftermath a settlement was reached in 1997.

3 See Isaacson, *supra* note 1, p. 284.

were implementing them.⁴ At the same time Jobs was not shy in risking lawsuits in his own dealings with other companies. Isaacson: ‘When he decided that a division of Airborne Express wasn’t delivering spare parts quickly enough, he ordered an Apple manager to break the contract. When the manager protested that doing so could lead to a lawsuit, Jobs replied, “Just tell them if they fuck with us, they’ll never get another fucking dime from this company, ever.”’⁵

Taking a step back to see the bigger picture, one wonders if the story of Apple’s troubles is exemplary. Do companies have their potential legal problems usually with other companies and is the legal recourse a common remedy? And if not, in what way do companies find solutions to these problems? What kind of conflicts do companies have anyway, with whom, and what do their CEOs think of the options they have to solve them? For sociologists of law, these kinds of questions are the gist of their professional life. Perhaps because they are neither numerous nor influential, the relevance of asking these questions is not self-evident. This is especially the case when one considers that the more numerous and more influential lawyers often seclude themselves from the murky world of the subjects of the law, choosing instead the esoteric sphere of the law and how judges apply it to the cases they decide. Nonetheless, knowledge about how subjects of the law use or do not use the regulations that lawmakers devise to influence their behaviour is useful for lawyers as well. To understand what drives the demand for court cases, for instance; or to recognize why the effects of certain legal arrangements (threaten to) turn out differently than hoped for or expected, sometimes compelling subjects of the law to ignore it, lawmakers to change it, or judges to apply it in a different way; or to understand what the effects of verdicts are and in what way they influence the future behaviour of subjects of the law.

In the case of private citizens and the potential legal problems that they face, the interest of scientists who are not sociologists of law is growing. Since the American Bar Association conducted a survey on the legal needs of American citizens in 1994⁶ a wealth of information has been gathered worldwide on the problems that citizens face and the ways they chose to deal with them.⁷ Unfortunately, this is not yet the case when it comes to the different kinds of problems that companies face when doing business. The literature on this topic is sketchy at best, which is quite remarkable when one considers the amounts of money involved. There is some research into the costs of litigation, which shows that the average Fortune 200 company spent \$ 133 million on litigation in 2008, excluding awards and settlements.⁸ Including these costs the Fortune 500 companies are supposed to have spent an estimated total of \$ 210 billion on litigation in 2006, an amount that equals about one third of their annual after tax profits.⁹ In spite of these amounts of money involved, little is still known about what kinds of problems companies have, with which type of opponent, and how they resolve those problems. That the Fortune 500 companies settle 98.2% of their problems and obtain a verdict in only 1.8% of them,¹⁰ makes one aware of the fact that simply studying judicial decisions to learn more about the problems companies face will give one a highly selective view. To learn more, we have to choose another approach.

This article aims to answer some of the questions raised above by dealing with the conflicts that Dutch small and medium-sized enterprises (SMEs) have. SMEs are companies that employ at most 99 employees. Jointly they make up a little over 99% of the companies in the Netherlands. In 2009, the Scientific Research and Documentation Centre (WODC) of the Dutch Ministry of Safety and Justice published a study into the kinds of problems Dutch SMEs experience and the ways they deal with them.¹¹ The study was based on two surveys among the members of the SME panel of EIM Business & Policy

4 Ibid., pp. 116, 284.

5 Ibid., p. 207. Sure enough a lawsuit was the result.

6 American Bar Association, *Legal needs and civil justice. A Survey of Americans. Major Findings from the Comprehensive Legal Needs Study*, 1994.

7 See for an overview of the non-American literature: B.C.J. van Velthoven & C.M. Klein Haarhuis, *Geschildbeslechtingdelta 2009. Over verloop en afloop van (potentieel) juridische problemen van burgers*, 2010, pp. 31-35. For the American legal needs literature, see <http://www.nlada.org/Civil/Civil_SPAN/SPAN_Library> (last 1 visited June 2011).

8 Searle Center on Law, Regulation, and Economic Growth, *Litigation Cost Survey of Major Companies*, 2010, p. 7.

9 J.B. Henry, ‘Fortune 500: The Total Cost of Litigation Estimated at One-Third Profits.’ 2008 *The Metropolitan Corporate Counsel*, February, p. 28.

10 Ibid.

11 M.T. Croes & G.C. Maas, *Geschildbeslechtingdelta midden- en kleinbedrijf. Over het optreden en afhandelen van (potentieel) juridische problemen in het midden- en kleinbedrijf*, 2009.

Research¹² in 2006. A total of 2,300 decision makers (mostly managers) in as many SMEs participated in this panel. 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. By serious problems were meant difficulties such as conflicts over working conditions, conflicts over sold products or services, or conflicts over permits or taxes. It was up to the decision maker involved to decide whether their company's problem could be categorized as 'serious' or not. After it became clear that the decision makers reported many problems that appeared to be of minor importance, it was decided to focus the second survey entirely on the potential legal problems they had experienced in 2006. This group of problems was explicitly identified as the subgroup of serious problems that, based on the subjective evaluation of the decision maker, could have resulted or actually did result in legal procedures. Besides, this second survey also inquired into the nature of the opposing party in the conflict and the kind of legal assistance that the decision makers relied upon.

The article is organized as follows. Below, the second section will provide a brief overview of the empirical research into the kinds of problems companies encounter and the ways they choose to solve them. The third section introduces the SMEs in the Netherlands; the fourth section deals with the incidence and frequency of serious problems that SMEs in the Netherlands experience. The fifth section deals with the incidence and frequency of potential legal problems, while the sixth section will examine the nature of the opposing parties. The seventh section deals with the co-occurrence of serious and potential legal problems. The eighth section examines the background characteristics of SMEs and the incidence of serious and potential legal problems encountered. The ninth section deals with the engagement of legal assistance in case of serious and potential legal problems; the tenth section with the SMEs that suffered problems but did not engage legal service providers. The eleventh section examines the customary way of terminating potential legal problems, while the twelfth section will deal with the experiences with the legal service providers. The thirteenth and concluding section will draw attention to some similarities and dissimilarities between the Dutch study and the other previously introduced empirical studies.

2. Companies on their paths to justice

What we do know about the kinds of problems companies encounter and the ways they deal with them is limited. It is clear, however, that large companies try to avoid bringing their problems to court,¹³ especially when their business relations are (meant to be) long term.¹⁴ In addition, they base their international business policies – in part – on differences in the choice of contract law and jurisdiction.¹⁵ Some of the literature further suggests that family companies deal with problems in a different way than non-family companies, relying less on the courts and official Alternative Dispute Resolution (ADR) procedures and more on informal forums and arrangements.¹⁶ There are a few modern exceptions to this general rule of sketchiness and three of them will be introduced below: a survey-based report on intellectual property enforcement in smaller UK firms,¹⁷ dealing with the kinds of problems that Apple faced and faces with Microsoft and Google; a survey-based report on the demand for and the supply of legal and related services in Hong Kong;¹⁸ and a survey-based report on the disputes experienced by small businesses in Australia.¹⁹

12 <<http://english.eim.nl/>> (last visited 1 June 2011).

13 See Henry, *supra* note 9, p. 28.

14 A. Jettinghof, *Het komt zelden voor. Beheersing van klachten en geschillen in relaties tussen bedrijven*, 2001.

15 S. Vogenauer, *Civil Justice Systems in Europe: Implications for Choice of Forum and Choice of Contract Law. A Business Survey. Final Results*, 2010, pp. 13-33.

16 M.A. Gomez, 'All in the family: the influence of social networks on dispute processing (a case study of a developing economy)' 2008 *Georgia journal of international and comparative law* 36. no. 2, pp 291-353.

17 C. Greenhalgh et al., *Intellectual property enforcement in smaller UK firms. A report for the Strategic Advisory Board for Intellectual Property Policy (SABIP)*, 2010.

18 Asia Consulting Group Ltd., *Study on the Demand for and Supply of Legal and Related Services*, 2008.

19 Orima Research, *Small Business Dispute Resolution*, 2010.

Intellectual property disputes in the UK

The report on intellectual property enforcement in British firms dates from 2010. In total, 1,858 micro firms (0-9 employees) and SMEs (in this report: 10-249 employees) that could be characterized as patentees, trade markers, non-patentees (from patent-intensive industries), non-trade markers (from trade-mark-intensive industries) or firms in copyright/design-intensive industries were contacted. The online survey received 170 responses, representing a 9.1% response rate. The final response rate was raised to 20.1% through the addition of 225 responses to the follow-up telephone survey.

Of the respondents 25% indicated that they had been involved in intellectual property disputes, defined as any infringement, whether or not this ended in legal proceedings, during the previous five years. The possibility of problems was not evenly spread: 40% of patent-holding firms had experienced a dispute in the previous five years, while the same was true of 34% of firms with trade marks. By contrast, firms that did not use patents or trade marks were much less likely to have a dispute (estimated at only 7% of firms in patent-intensive and 5% of firms in trade mark-intensive industries). In the creative industries, which are more likely to use copyright or design rights, around 20% had experienced an intellectual property dispute.

Respondents to the online survey gave information on 46 intellectual property disputes. To solve the problem, an exchange of letters between solicitors was the most common solution attempted. This was done in 37 cases, resolving 15 of them (40%). Subsequent studies of Patents Court listings showed that the total number of intellectual property cases that come to court is small (less than 40 per year on average from 2003 to 2009). This number is tiny compared to the number of firms operating in the economy. Many cases never come to court.²⁰ Apart from that, a settlement occurs in about 40% of all listed cases. The court only adjudicates in 50% of the cases listed.

High-level negotiation between firms was used in 15 instances. Other methods such as mediation, the use of the UK Intellectual Property Office (IPO), and small claims or county courts were rarely used. Only 6 of the 46 disputes ended up in the High Court. Overall, when firms were asked whether they were 'satisfied' with the outcome of the dispute, 80% said they were.

SME disputes in Hong Kong

For the Chinese study into the demand for and the supply of legal and related services in Hong Kong a representative sample of 3,337 SMEs (companies with less than 100 employees) was drawn from the Central Register of Establishments maintained by the Census and Statistics Department. The companies were questioned by mail and face to face about problems or disputes which were difficult to solve and that they encountered in 2005 or, when they did not encounter any during that year, they were questioned about the problems in the time period 2001-2004. A total of 1,813 companies participated in the research.

On the whole, 30.1% of the responding companies experienced at least one problem or dispute which was difficult to solve in 2005. Another 15.8% did not experience such problems or disputes in 2005, but did so during 2001-2004. This brings the total of companies that experienced problems during the time period of 2001-2005 to 45.9%.²¹ These companies reported on average 4.7 problems for the time period under scrutiny.²² About two thirds (67.2%) of these problems were, according to the respondents, actually unimportant. Another 10.4% was deemed important without any action being taken while in the remaining 22.3% the problem or dispute was deemed important and action was taken. Table 1 provides an overview of the kinds of problems and disputes, the percentage of companies that encountered them (incidence) during the time period under scrutiny, the relative frequencies of all them and only the important problems or disputes.

20 See also J.O. Lanjouw & M. Schankerman, 'Protecting intellectual property rights: are small firms handicapped?' 2004 *Journal of Law and Economics* 47 no. 1, pp. 45-74. Their results pertaining to US firms from 1978 to 1999 confirm this. They furthermore stress that the possibility of litigation is considerably higher for smaller companies.

21 Asia Consulting Group, *supra* note 18, p. 89. On the same page the number of companies that reported having experienced problems during this five-year period is 881, which is 48.6% out of a total of 1,813. It is unclear which percentage is correct.

22 For about two thirds of the respondents, this was one year, for the remainder 5 years. General statements in this report relating to the (relative) frequency with which companies encountered problems are seriously hampered by adding these two groups together.

Table 1 Incidence and relative frequency of problems and disputes among Hong Kong SMEs (N=881).

Type of problem	Incidence (N=881)	Relative frequency of all problems (N=4,311)	Relative frequency of important problems (N=1,452)
Labour disputes or related problems	19.8	11.4	10.6
Renting of premises by company	13.2	4.4	6.0
Renting out of company properties	4.3	2.0	2.1
Properties owned by company	6.5	3.7	2.7
Business-related matters	43.9	35.3	30.0
Other money matters	53.9	25.5	34.7
Intellectual property	10.1	4.1	3.8
Injuries and health problems suffered by employees	15.1	6.5	5.6
Government departments/government officials	11.1	5.4	3.9
Others	2.5	1.8	0.7
Total		100	100

Source: Asia Consulting Group Ltd., *Study on the Demand for and Supply of Legal and Related Services*, 2008.

Slightly less than one third (31.3%) of the important problems or disputes involved consumers of the companies under study. A further 20.6% involved business acquaintances. Employees accounted for 18.6% of these problems, business corporations for 14.5%, private individuals for 8.5% and government departments for 3.6%. In 48.5% of the important problems or disputes the Chinese companies engaged the help of legal service providers.

SME disputes in Australia

The research in Australia was initiated by the Australian Government's Department of Innovation, Industry, Science and Research. The aim of the project was to investigate to what extent small businesses (less than 20 employees) in Australia have an unmet demand for dispute resolution procedures. To answer this question, a telephone survey and interviews were held to determine the incidence of business-to-business disputes experienced by small businesses and to identify the mechanisms to resolve them.

A total of 2,007 companies were questioned, about one seventh (15.1%)²³ reported having had serious business disputes during the past 5 years. Of all the companies 1.5% reported having had routine and minor problems, not something to be concerned about; 2.3% reported having had potentially serious but easily resolved problems without any escalation; 6.6% reported having had potentially serious problems but escalation was avoided due to potential costs; 2.0% reported having had problems that were serious enough to consider utilising third-party intervention, but they did not actually do so; 1.8% reported having been faced with problems that required intervention by a third party or self-representation in formal proceedings; 4.6% reported having had problems which were sufficiently serious to result in legal action being taken by either business involved in the dispute.

Regarding the nature of the disputes, of the 9% of respondents which had experienced a serious disagreement (that necessitated the use of a third party or legal action, or having to consider such action) 65% indicated that it had been a disagreement over payment for goods or services; 30% indicated that it was over other contractual obligations (excluding payment, retail tenancy and franchising issues); and 7% indicated that it was another issue.

23 Orima research, supra note 19, p. 5. On page 6 the report claims that 80% of the companies did not report any dispute or disagreement during the last five years. Which percentage is correct, is unknown.

Of the 131 companies which had a dispute and sought third party support, 58% engaged a lawyer for either advice (32%), to initiate legal proceedings (28%) or to defend against initiated proceedings (8%).²⁴ A quarter (26%) of the companies that underwent legal proceedings had their case heard in court.

SMEs, disputes and empirical research

Common themes in the three empirical studies are the incidence and frequency of the problems that (small) businesses encounter and the way they try to solve them. In a research field where empirical research is scarce, these are sensible topics to start with. At the same time the three studies show, however, that they have limitations: they are focused on one kind of problem, like the UK study; they have a research design that makes it difficult to say anything about the frequency of the problems encountered, like the Chinese study;²⁵ or they focus on just one kind of opposing party, like the Australian study. The Dutch study that is presented below is not the first of its kind, but it does a better job in reporting on the incidence and frequency of problems that SMEs experience: it deals with all kinds of problems which SMEs encounter, with all opposing parties that SMEs can face and its research design makes it possible to draw clear conclusions also regarding the frequency of the problems encountered.

3. SMEs in the Netherlands

In the Netherlands, more than 99% of all companies are SMEs. They are, however, not evenly spread over all sectors of the economy. Table 2 below shows the number of companies in the Netherlands as of 1 January 2006, subdivided by their number of workers and the sector of the economy in which they are active. This table makes clear that more than 91% of all companies in the Netherlands have up to 9 workers and that companies with more than 99 workers are actually not numerous: only 6,615 companies met this criterion.

The companies in the SME panel of EIM did not come from every sector of the Dutch economy. In Table 2, the numbers relating to the sectors and size categories from which they came are printed in bold type. As the table makes clear, important sectors of the economy that are missing in our research groups are agriculture, education and health care. For the latter two sectors, many of the companies involved would have turned out to be state-owned or state-financed organizations. That is not what we are really interested in here, since we will focus on the private, not the public segment of the economy. The most important economic sector to which the results of the WODC study do not pertain is therefore agriculture.

Table 2 Number of companies in the Netherlands by size and sector, 2006.

Sector	Number of companies	Up to 9 workers	Between 10 and 99 workers	More than 99 workers
Agriculture	93,365	91,600	1,735	30
Fishing	720	685	30	0
Mining	215	130	70	10
Industry	46,605	36,170	9,130	1,300
Public service corporations	550	480	25	45
Building sector	81,690	74,465	6,885	340
Repair sector, trade	164,590	149,465	14,310	810
(Hotel and) catering (industry)	36,650	33,105	3,465	85
Transportation, storage, communication	27,925	23,605	3,945	370

²⁴ Orima research, supra note 19, p. 18. Numbers are taken from figure 9; the appendices that are supposed to be part of the report and contain the figures have not been published, unfortunately.

²⁵ See note 21, supra.

Sector	Number of companies	Up to 9 workers	Between 10 and 99 workers	More than 99 workers
Finance	14,665	13,525	1,020	125
Rental services, business services	158,650	147,895	9,865	875
Public administration	1,065	330	275	460
Education	20,500	18,060	1,585	850
Health care	42,870	39,320	2,525	1,030
Culture, recreation, other services	56,320	52,580	3,460	270
Totals	746,365	681,430	58,325	6,615

Source: WODC data file.

Since the members of the SME panel are not representative with regard to their size and the sector of the economy in which they are active, weighting was used to correct the disproportion this generates. All figures mentioned below are therefore weighted.

4. Incidence and frequency of serious problems

Many SMEs face serious problems. A total of 1,298 (61.9%) of the 2,097 surveyed companies experienced serious problems in 2006. In addition, many SMEs face these problems quite regularly: per company that experienced serious problems, the number of these serious problems averaged 12.7 in 2006. For all companies, including the ones that did not experience problems in 2006, this average is 7.9 serious problems. Table 3 presents an overview of the kinds of serious problems that SMEs experienced in 2006 and the frequency with which they encountered them. A distinction is made between nine kinds of problems: problems relating to the payment for goods and services sold; problems relating to the quality, quantity and delivery time of goods and services sold; problems relating to working conditions, wages and the laying off of staff; problems relating to applying for permits; problems relating to taxes, customs and duties; problems relating to the payment for goods and services bought; problems relating to the quality, quantity and delivery time of goods and services bought; problems relating to environmental pollution, stench and noise; and other kinds of problems. Regarding this last-mentioned category of problems, we only know whether companies encountered them, not the frequency with which this occurred.

As Table 3 shows, the most frequently experienced serious problems were problems concerning the payment for goods supplied or services provided by the SME (45.4% of the serious problems); the quality, quantity or delivery time of goods or services purchased (16.5% of the serious problems); and the quality, quantity or delivery time of goods supplied or services provided by the SME (9.2% of the serious problems).

Yet, when we focus on the percentage of companies that experienced different kinds of serious problems, the order is slightly different. Serious problems regarding the payment for goods and services sold (experienced by 36.7% of the SMEs) and serious problems regarding the quality, quantity and delivery time of goods and services purchased (experienced by 12.6% of the SMEs) still rank first and second. But in third place, we find serious problems regarding the payment for goods and services bought (experienced by 13.9% of the SMEs). In both cases, however, the first and second positions in the ranking order are taken up by what amounts to problems caused by the 'other' party. This either concerns the unsatisfactory behaviour of the trading partner regarding payment for deliveries by the SME of the respondent, or the unsatisfactory behaviour of the trading partner regarding the quality, quantity and delivery time for goods or services that the SME of the respondent has ordered.

Table 3 Incidence and frequency of serious problems in 2006 (N=2,097, weighted).²⁶

Kind of problem	Percentage of companies	Percentage of problems	Average number of problems per company (N=2,097)	Average experienced problem frequency (N=1,298)
Payment for goods and services sold	36.7	45.4	3.6	10.1
Quality, quantity and delivery time of goods and services sold	8.3	9.2	0.7	9.4
Working conditions, wages and the laying off of workers	10.8	2.2	0.2	1.6
Applying for permits	11.9	4.3	0.3	2.9
Taxes, customs and duties	11.5	8.8	0.7	6.3
Payment for goods and services bought	13.9	8.8	0.7	5.3
Quality, quantity and delivery time of goods and services bought	12.6	16.5	1.3	11.1
Environmental pollution, stench and noise	5.2	3.8	0.3	6.0
Other problems	7.5	(at least) 1.0	0.1	1.0
Totals	61.9	100	7.9	12.7

Source: WODC data file.

Table 4 provides a further insight into the spread of the frequency with which the SMEs experienced serious problems in 2006. Apparently, several kinds of these problems were experienced by the majority of the SMEs not more than once a year. This is true for problems regarding working conditions, wages and the laying off of staff; regarding environmental pollution, stench and noise; and regarding applying for permits. Other kinds of serious problems occurred much more often, especially problems relating to the quality, quantity and delivery time of goods and services bought. About one fifth of the 245 SMEs encountered them more than ten times during 2006. Given that, comparatively speaking, the number of companies that did experience this kind of problem was not very high, the average number of problems per company had to be high. And with 11.1 problems per company it was. Another type of serious problem that companies experienced often concerned the payment for goods and services sold. With an average number of problems per SME of 10.1 and 15.1% experiencing them more than ten times, this type of problem ranks second. However, since many more companies faced this kind of problem, 741 to be precise, the total number of these problems is much higher.

²⁶ Of the SMEs, 1,298 (61.9%) indicated that they had encountered at least one potential legal problem in 2006. However, the number of companies that were able to tell with what frequency they had encountered the different kinds of serious problems was slightly smaller. This last number was used to calculate the number of problems per company. The total average number of problems per company is calculated by taking the total number of mentioned problems and dividing that number by 2,097 and 1,298, respectively.

Table 4 *Percentage of serious problems experienced by SMEs in 2006 (N=1,298, weighted).*

Type of problem	Number of problems experienced by percentage of SMEs							Average experienced problem frequency
	1	2	3	4	5	6-10	>10	
Payment for goods and services sold	25.8	19.2	12.4	7.8	7.7	12.1	15.1	10.1
Quality, quantity and delivery time of goods and services sold	27.9	16.3	12.5	2.1	10.8	12.4	18.0	9.4
Working conditions, wages and the laying off of workers	71.7	17.8	6.4	0.8	0.7	2.4	0.1	1.6
Applying for permits	51.1	18.1	15.5	3.0	4.0	6.3	2.0	2.9
Taxes, customs and duties	40.5	25.9	10.3	2.9	9.9	4.4	6.1	6.3
Payment for goods and services bought	31.1	25.2	9.5	7.2	13.3	8.1	5.7	5.3
Quality, quantity and delivery time of goods and services bought	16.9	16.2	11.0	5.1	12.2	19.0	19.6	11.1
Environmental pollution, stench and noise	66.9	14.9	4.9	6.2	0.9	0.8	5.3	6.0

Source: WODC data file.

5. Incidence and frequency of potential legal problems

Regarding the potential legal problems, the subgroup of serious problems that, based on the subjective evaluation of the decision maker, could have resulted or actually did result in legal procedures, it is striking that only 37.0% of the SMEs reported them. The frequency with which they had to deal with them is also considerably lower: 5.7 problems for the companies that had to deal with them and 2.1 for all the companies in our sample.

Table 5 gives an overview of the kinds of serious problems that SMEs experienced in 2006 and the frequency with which they were confronted with them. The distinction that has been made between kinds of problems is similar to the division presented above regarding the serious problems. There are, however, a few differences. We added 'liability for and settlement of damage' and 'serious kinds of crime and fraud' instead of 'environmental pollution, stench and noise' and 'other problems', because the first survey had clarified that few companies were confronted by serious problems belonging to the last two categories.

Table 5 Incidence and frequency of potential legal problems (N=1,784, weighted).²⁷

Kind of problem	Percentage of companies	Percentage of problems	Average number of problems per company (N=1,784)	Average experienced problem frequency (N=660)
Payment for goods and services sold	21.9	46.8	0.98	4.8
Quality, quantity and delivery time of goods and services sold	4.9	6.7	0.14	4.0
Working conditions, wages and the laying off of workers	6.8	4.4	0.09	1.5
Applying for permits	3.6	2.6	0.05	1.7
Taxes, customs and duties	3.5	2.2	0.05	1.5
Payment for goods and services bought	3.6	3.3	0.07	3.6
Quality, quantity and delivery time of goods and services bought	5.6	17.8	0.37	8.3
Liability for and settlement of damage	5.2	5.0	0.10	2.6
Serious kinds of crime and fraud	7.6	11.3	0.24	3.4
Totals	37.0	100	2.1	5.7

Source: WODC data file.

The largest group of potential legal problems relates to the payment for goods supplied or services provided (46.8% of the potential legal problems), followed by problems related to the quality, quantity or delivery time of goods or services purchased (17.8% of the potential legal problems), and problems related to serious forms of crime or fraud (11.3% of the potential legal problems). However, as was the case with the serious problems, when we focus on the percentage of companies that experienced the different kinds of potential legal problems, the order is slightly different. Potential legal problems regarding the payment for goods supplied or services provided still ranks first (experienced by 21.9% of the SMEs). Yet, the second position in this ranking order is taken up by serious kinds of crime and fraud (experienced by 7.6% of the SMEs). The third place is occupied by potential legal problems relating to working conditions, wages and the laying off of workers (experienced by 6.8% of the SMEs). Again, problems caused by 'other' parties dominate.

Table 6 provides a further insight into the spread of the frequency with which the SMEs experienced potential legal problems in 2006. As was the case with the serious problems, there are several kinds of potential legal problems where the majority of companies encountered them only once during 2006. This is true for potential legal problems relating to working conditions, wages and the laying off of staff; relating to taxes, customs and duties; relating to applying for permits, and relating to the liability for and settlement of damage. On average, the potential legal problems concerning the quality, quantity and delivery time of goods and services bought showed the highest average problem frequency, while 13.4% of the companies that experienced them encountered them more than ten times that year. It should be stressed, however, that only 12.1% of the SMEs reported having these problems. Although experienced less frequently per company that encountered them, potential legal problems regarding the payment for goods and services sold were reported by 55.2% of the SMEs that had problems.

²⁷ 660 SMEs (37.0%) indicated that they had encountered at least one potential legal problem in 2006. However, the number of companies that were able to tell with what frequency they encountered the different kinds of potential legal problems was slightly smaller. This last number was used to calculate the number of problems per company. The total average number of problems per company is calculated by taking the total number of mentioned problems and dividing that number by 1,784 and 660, respectively.

Table 6 *Number of potential legal problems experienced by SMEs in 2006 (N=660, weighted).*

Type of problem	Number of problems experienced by percentage of SMEs							Average experienced problem frequency
	1	2	3	4	5	6-10	>10	
Payment for goods and services sold	39.9	18.4	13.4	6.1	5.1	9.5	7.6	4.8
Quality, quantity and delivery time of goods and services sold	45.0	11.6	10.2	3.7	2.0	27.0	0.5	4.0
Working conditions, wages and the laying off of workers	72.9	16.0	7.8	0.6	2.7	0.1	0	1.5
Applying for permits	69.1	13.6	5.7	4.5	6.8	0.3	0	1.7
Taxes, customs and duties	70.0	21.7	1.0	4.0	3.1	0.3	0	1.5
Payment for goods and services bought	35.1	9.9	11.9	13.1	8.2	21.8	0	3.6
Quality, quantity and delivery time of goods and services bought	38.4	19.5	6.1	0.6	9.9	12.1	13.4	8.3
Liability for and settlement of damage	69.0	13.7	13.0	0.2	2.2	0.9	0.9	2.6
Serious kinds of crime and fraud	43.7	22.2	11.0	3.5	9.0	8.3	2.3	3.4

Source: WODC data file.

With respect to both the serious and the potential legal problems, about three quarters of the problems concern the (payment for the) delivery or purchase of goods or services. This means that the ‘normal’ economic exchange is the most important source of the problems.

6. Opposing parties

In Section 4 we stated that, according to our respondents, problems caused by ‘other’ parties dominate. In the second survey, more attention was paid to this opposing party. In most cases, a distinction was made between companies, private persons, the government and other organizations. In cases of specific potential legal problems that limit the kinds of potential opponents, such as problems regarding applications for permits or problems regarding taxes, duties and customs, which only allow for the government as the opposing party, no other parties were distinguished. In other cases, such as potential legal problems regarding working conditions, wages and the laying off of staff, or regarding serious kinds of crime and fraud, alternative opposing parties were distinguished. Table 7 presents an overview of the different types of potential legal problems that were experienced per opposing party.

Of the 3,597 potential 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 organizations and the overlapping category ‘legal entities other than the company’s own employees’, which relates exclusively to crime and fraud). Apart from the kinds of potential legal problems for which a company as an opponent does not apply, in Table 7 companies are always the most frequently met opposing party. Besides, companies also continuously rank first as the opposing party when we look at the incidence of the potential legal problems encountered. We can therefore conclude that companies are by far the most important source of potential legal problems for SMEs.

Table 7 Incidence and frequency of a potential legal problem per opposing party (N=1,784, weighted).

Type of problem	Opposing party	Companies with at least one problem in 2006 (N=660)	Potential legal problems (N=3,597)
		Percentage	Percentage
Payment for goods and services sold			
	Companies	14.1	28.5
	Private persons	7.4	16.5
	The government	0.5	1.2
	Other organizations	0.3	0.3
Quality, quantity and delivery time of goods and services sold			
	Companies	2.2	4.4
	Private persons	1.1	1.8
	The government	0.2	0.1
	Other organizations	0.1	0.6
Working conditions, wages and the laying off of workers			
	Employees	6.3	4.5
	Staff representatives	0.0	0
	Union	0.0	0
	The government	0.1	0.1
Applying for permits	The government	3.3	2.7
Taxes, customs and duties	The government	3.0	2.3
Payment for goods and services bought			
	Companies	1.8	3.1
	Private persons	0.1	0.1
	The government	0.2	0.3
	Other organizations	0	0
Quality, quantity and delivery time of goods and services bought			
	Companies	4.4	16.7
	Private persons	0.0	0
	The government	0.0	0
	Other organizations	0.1	1.8
Liability for and settlement of damage			
	Companies	2.0	1.8
	Private persons	1.5	1.1
	The government	0.2	0.1
	Other organizations	0.4	0.3
Serious kinds of crime and fraud			
	Employees	0.7	0.4
	Other legal bodies	6.0	11.3
Totals		37.0	100

Source: WODC data file.

7. Relationships between serious and potential legal problems

As regards the incidence and frequency of the serious or potential legal problems with which they are faced, there are significant differences between SMEs. To a certain extent, these differences in encountering problems can be explained by the fact that the SMEs already had certain problems, which gave rise to new problems. For example, there is, statistically speaking, a significant relationship between the incidence of serious ($r=0.09$; $p<0.01$; $N=1,263$) as well as potential legal ($r=0.34$; $p<0.01$; $N=660$) problems about the quality, quantity and delivery time of goods or services purchased and payment for these goods or services. This relationship also exists between the frequency of these serious ($r=0.13$; $p<0.05$; $N=1,263$) and potential legal ($r=0.21$; $p<0.01$; $N=660$) problems. These relationships appear to be a matter of common sense: if an SME is not satisfied with a delivery, the likelihood that it will pay for it (in full and on time) decreases.

Another example is the relationship between the incidence ($r=0.27$; $p<0.01$; $N=1,298$) and frequency ($r=0.35$; $p<0.01$; $N=1,263$) of serious problems concerning the quality, quantity and delivery time of both supplied and purchased goods and services. This relationship also exists between the incidence ($r=0.18$; $p<0.01$; $N=660$) and frequency ($r=0.10$; $p<0.05$; $N=660$) of potential legal problems regarding the quality, quantity and delivery time of supplied and purchased goods and services. This relationship is conceivable as well. After all, for the production of its goods or services, an SME depends on the performance of its suppliers. If there is a disruption in the performance of these suppliers, this will have consequences for the performance of the SME as well.

Below, four tables present the relationships between the different serious and potential legal problems. Tables 8 and 9 show the incidence and frequency of serious problems; Tables 10 and 11 the incidence and frequency of potential legal problems.

Table 8 Correlation matrix for the incidence of serious problems of SMEs in 2006 (N=1,298, weighted).¹

Problem type	P2	P3	P4	P5	P6	P7	P8	P9
P1 Payment for goods and services delivered	0.14**	-0.05	-0.17**	-0.14**	-0.01	0.03	-0.10**	-0.08**
P2 Delivered goods and services, other	X	0.12**	-0.02	-0.05	0.07*	0.27**	-0.04	0.02
P3 Working conditions, wages, laying off		X	-0.01	-0.00	-0.04	0.04	-0.06*	0.03
P4 Applying for permits			X	-0.01	-0.06*	0.02	0.12**	0.02
P5 Taxes, customs and duties				X	-0.06*	-0.05	-0.05	-0.04
P6 Payment for goods and services sold					X	0.09**	-0.06*	0.02
P7 Sold goods and services, other						X	0.00	0.07**
P8 Environmental pollution, stench, noise							X	0.01
P9 Other								X

Source: WODC data file.

¹ Pearson correlation coefficients.

* = statistically significant at the 0.05 level (two-sided).

** = statistically significant at the 0.01 level (two-sided).

Table 9 Correlation matrix for the frequency of serious problems of SMEs in 2006 (N=1,263, weighted).¹

Problem type	P2	P3	P4	P5	P6	P7	P8
P1 Payment for goods and services delivered	0.24**	0.07*	-0.09**	-0.01	0.13**	0.14**	-0.06*
P2 Delivered goods and services, other	X	0.21**	-0.02	0.02	0.06*	0.35**	-0.02
P3 Working conditions, wages, laying off		X	0.06*	0.05	-0.06	0.05	-0.01
P4 Applying for permits			X	0.00	-0.06*	0.06*	0.05
P5 Taxes, customs and duties				X	-0.03	-0.04	-0.05
P6 Payment for goods and services sold					X	0.13**	-0.05
P7 Sold goods and services, other						X	0.01
P8 Environmental pollution, stench, noise							X

Source: WODC data file.

¹ Pearson correlation coefficients.

* = statistically significant at the 0.05 level (two-sided).

** = statistically significant at the 0.01 level (two-sided).

Table 10 Correlation matrix for the incidence of potential legal problems of SMEs in 2006 (N=660, weighted).¹

Problem type	P2	P3	P4	P5	P6	P7	P8	P9
P1 Payment for goods and services delivered	0.07	-0.25**	-0.03	-0.22**	0.02	-0.04	0.05	-0.18**
P2 Delivered goods and services, other	X	-0.08*	-0.00	0.04	0.05	0.18**	0.10*	-0.07
P3 Working conditions, wages, laying off		X	-0.03	-0.09*	-0.06	-0.11**	-0.01	0.01
P4 Applying for permits			X	0.05	0.11**	0.12**	0.04	0.05
P5 Taxes, customs and duties				X	0.05	0.05	-0.01	-0.01
P6 Payment for goods and services sold					X	0.34**	0.10*	-0.07
P7 Sold goods and services, other						X	0.06	-0.00
P8 Liability for damage							X	-0.02
P9 Crime and fraud								X

Source: WODC data file.

¹ Pearson correlation coefficients.

* = statistically significant at the 0.05 level (two-sided).

** = statistically significant at the 0.01 level (two-sided).

Table 11 Correlation matrix for the frequency of potential legal problems of SMEs in 2006 (N=660, weighted).¹

Problem type	P2	P3	P4	P5	P6	P7	P8	P9
P1 Payment for goods and services delivered	0.03	-0.08*	0.03	-0.11**	0.03	0.06	0.05	0.03
P2 Delivered goods and services, other	X	-0.06	-0.06	-0.00	-0.05	0.10*	0.02	0.02
P3 Working conditions, wages, laying off		X	0.13**	-0.09*	0.02	-0.06	-0.01	-0.02
P4 Applying for permits			X	0.03	0.00	-0.03	0.01	0.01
P5 Taxes, customs and duties				X	-0.05	-0.03	0.03	0.07
P6 Payment for goods and services sold					X	0.21**	0.00	-0.07
P7 Sold goods and services, other						X	-0.02	-0.02
P8 Liability for damage							X	-0.49
P9 Crime and fraud								X

Source: WODC data file.

¹ Pearson correlation coefficients.

* = statistically significant at the 0.05 level (two-sided).

** = statistically significant at the 0.01 level (two-sided).

The four tables make it clear that the incidence and frequency of some kinds of serious or potential legal problems are more likely than others to be correlated. This is especially true for the incidence and frequency of problems, whether serious or potentially legal in nature, concerning the quality, quantity and delivery time of goods and services sold. As noted above, the fact that the production of goods and services by the SMEs depends on the behaviour of trading partners and can easily be disrupted is probably the reason why we see relatively many correlations here. On the other hand, a potential legal problem like crime and fraud shows few relationships with other problems. Only the incidence of this category of potential legal problems correlates statistically significantly with the incidence of potential legal problems regarding the payment for delivered goods and services. This relationship is negative, which probably means that some respondents had some difficulties in choosing whether their potential legal problem ought to be seen as a case of crime and fraud or as a case of deferred payment.

8. Background characteristics and the incidence of serious and potential legal problems

In order to gain more insight into the likelihood of the incidence of serious and potential legal problems, the role of some characteristics of companies was researched as well. These characteristics were: the sector of the economy in which the SME was active; the number of employed persons in 2006; the age of the company; the number of establishments of the SME; the degree of independence of the SME (whether or not the company was a branch or a franchise); its legal form; and whether the SME was a member of a trading association or not. With respect to these characteristics, Table 12 presents an overview of all the responding SMEs in the panel of EIM and the responding SMEs experiencing at least one serious problem in 2006. For the latter, the percentage of the category of the characteristics is given as well. Whether or not belonging to this category meant that the SME ran a statistically significant higher or lower risk of encountering serious problems is indicated as well.

Table 12 Characteristics of SMEs and the incidence of serious problems in 2006 (N=2,097, weighted).

Characteristics of the SME	Category	All SMEs (N=2,097)	SMEs with at least one serious problem in 2006 (N=1,298)	
		Percentage	Percentage	As a percentage of the category
Sector	Industry	8.2	9.0	68.0
	Building sector	14.4	16.0	68.6**
	Repair sector, trade	30.1	30.0	61.6
	(Hotel and) catering (industry)	6.8	6.2	57.0
	Transportation, storage, communication	5.0	4.5	56.2
	Finance	2.7	2.8	64.3
	Rental services	27.1	27.3	62.5
	Culture, recreation, other services	5.7	4.1	44.2**
	Totals	100	100	61.9
Number of employed persons in 2006	1	20.7	16.2	48.4**
	2	21.8	18.8	53.5**
	3-4	24.3	26.0	66.3*
	5-9	24.9	28.1	69.7**
	10 and above	8.3	10.9	81.0**
	Totals	100	100	61.9
Company age	less than 5 years	11.1	10.8	59.6
	5 to 10 years	20.2	21.5	65.1
	10 to 15 years	30.6	27.8	55.6**
	15 to 25 years	19.8	21.7	67.2**
	25 to 40 years	8.9	9.2	63.4
	40 and above	9.1	8.9	60.3
	Totals	100	100	61.3
Number of establishments	1	90.1	87.9	59.8**
	2	6.6	7.6	71.3*
	3-4	1.8	2.6	86.1**
	5 and above	1.5	1.9	79.3
	Totals	100	100	61.3
Degree of independence	Entirely independent	95.9	94.4	60.3**
	Other	4.1	5.6	85.0**
	Totals	100	100	61.3
Legal form	Private limited company	28.3	32.7	70.8**
	Partnership (firm)	34.7	33.2	58.7
	One-man business	34.9	31.6	55.6**
	Other	2.1	2.4	70.7
	Totals	100	100	61.3
Membership of a trade association	Yes	52.1	54.5	64.2
	No	47.9	45.5	58.2
	Totals	100	100	61.3

Source: WODC data file.

* = the difference in chance is statistically significant ($p < 0.05$, Fischer exact test, two-sided)

** = the difference in chance is statistically significant ($p < 0.01$, Fischer exact test, two-sided)

Table 12 makes clear that SMEs that were confronted with relatively few types of serious problems in 2006 were companies:

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

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

- that were active in the business sector ‘construction’;
- that employed three or more employees;
- that consisted of two or more establishments;
- that were not entirely independent;
- whose legal form was a private company with limited liability.

Regarding the incidence of potential legal problems, the role of the same characteristics was researched. Table 13 presents the results of this analysis.

Table 13 Characteristics of SMEs and the incidence of potential legal problems in 2006 (N=1,784, weighted).

Characteristics of the SME	Category	All SMEs (N=1,784)	SMEs with at least one potential legal problem in 2006 (N=660)	
		Percentage	Percentage	As a percentage of the category
Sector	Industry	8.2	8.6	39.0
	Building sector	14.4	15.8	40.5
	Repair sector, trade	30.0	30.6	37.7
	(Hotel and) catering (industry)	6.8	3.9	21.5**
	Transportation, storage, communication	5.0	5.9	43.8
	Finance	2.6	2.4	34.0
	Rental services	27.1	28.6	39.1
	Culture, recreation, other services	5.8	4.2	26.9*
	Totals	100	100	37.0
Number of employed persons in 2006	1	21.0	13.7	24.2**
	2	20.2	15.5	28.5**
	3-4	23.9	25.0	38.9
	5-9	25.2	29.2	43.0**
	10 and above	9.8	16.6	62.8**
	Totals	100	100	37.0

Characteristics of the SME	Category	All SMEs (N=1,784)	SMEs with at least one potential legal problem in 2006 (N=660)	
		Percentage	Percentage	As a percentage of the category
Company age	Less than 5 years	15.0	16.5	40.9
	5 to 10 years	20.9	21.4	37.9
	10 to 15 years	26.3	23.7	33.5
	15 to 25 years	17.8	18.1	37.7
	25 to 40 years	9.8	9.5	36.0
	40 and above	10.3	10.7	38.7
	Totals	100	100	37.0
Number of establishments	1	90.1	86.5	35.6**
	2	6.5	7.3	41.4
	3-4	2.2	3.8	62.5**
	5 and above	1.2	2.4	72.7**
	Totals	100	100	37.0
Degree of independence	Independent	96.0	94.1	36.3**
	Other	4.0	5.9	54.9**
	Totals	100	100	37.0
Legal form	Private limited company	32.8	40.5	45.7**
	Partnership (firm)	31.1	28.5	33.9
	One-man business	34.5	29.4	31.5**
	Other	1.6	1.7	37.9
	Totals	100	100	37.0
Membership of a trade association	Yes	53.0	58.3	40.8**
	No	47.0	41.7	32.9**
	Totals	100	100	37.1

Source: WODC data file.

* = the difference in chance is statistically significant ($p < 0.05$, Fischer exact test, two-sided)

** = the difference in chance is statistically significant ($p < 0.01$, Fischer exact test, two-sided)

Table 13 makes clear that SMEs that were faced with relatively few potentially legal types of problems were companies:

- that were active in the business sectors '(hotel and) catering (industry)' or 'culture, recreation, other services';
- that employed one or two employees;
- that consisted of a single establishment;
- that were entirely independent;
- whose legal form was a one-man business;
- that were not affiliated with any trade association.

Companies that were faced with relatively many types of potential legal problems were companies:

- that employed five or more employees;
- that consisted of three or more establishments;
- that were not entirely independent;
- whose legal form was a private company with limited liability;
- that were affiliated with a trade association.

9. Engaging legal assistance in case of serious and potential legal problems

Companies that are faced with problems have various options for dealing with them. An important choice is whether or not to engage legal assistance and, if so, what kind of legal assistance. This does not exclusively involve the legal profession: legal service providers also include accountants, advisors, mediators, dispute committees, the courts, legal expenses insurance companies, industry associations, bailiffs, collection agencies and the police. As Table 14 shows, in 2006 industry associations were most often engaged by the companies, irrespective of the question whether this was for a serious problem or merely for advice: 25.9% of all SMEs did so in 2006. Lawyers were engaged by 25.8% of all SMEs, legal advisors by 20.3% and court bailiffs by 17.6% of all SMEs.

Table 14 Incidence of SMEs making use of legal service providers in 2006 (N=2,097, weighted).²⁸

Legal service provider	Percentage
Industry Association	25.9
Lawyer	25.8
Legal advisor	20.3
Bailiff	17.6
Police	17.2
Courts	9.5
Legal expenses insurance	8.7
Other	3.6
Mediator	2.3
Arbitrator	1.8
Conciliation service	1.2

Source: WODC data file.

When we look at Table 15, which presents the frequency of engaging legal assistance, irrespective of whether this assistance was relied upon for advice or help with a serious problem, the order looks different. In that case, the main service providers are court bailiffs: in 2006, they were engaged in 23.5% of all engagements. They are followed by the industry association (21.9% of all engagements), lawyers (16.9% of all engagements), and legal advisors (13.1% of all engagements). When we look at the average number of times the legal service provider was called in per SME that engaged the said provider, the ranking is again different. The court bailiff again ranks first (on average engaged 6.5 times), but this time he is followed by 'other' legal service providers (on average engaged 6.1 times), the industry association (on average engaged 4.1 times) and the courts (on average engaged 3.3 times). A combination of a relatively low percentage of the total number of times a legal service provider was called in with a relatively high average number of times of being called in per SME that called in the provider indicates that a relatively small number of companies used this provider frequently. This is the case with the 'other' legal service providers. A combination of a relatively high percentage and a relatively low average means that the legal service provider was called in by many SMEs, but not time after time. This is, for instance, the case with lawyers.

²⁸ This percentage relates to the number of companies that reported having engaged a legal service provider. The number of companies that were able to indicate how often this happened was in some cases slightly lower. The incidence rate in table 27 in M.T. Croes & G.C. Maas, *Geschildbeslechtingdelta midden- en kleinbedrijf. Over het optreden en afhandelen van (potentieel) juridische problemen in het midden- en kleinbedrijf*, 2009, p. 60 is based on this slightly lower number of companies and therefore provides slightly lower percentages in some cases.

Table 15 Frequency of SMEs using legal service providers in 2006 (N=2,097, weighted).

Legal service provider	Frequency of being called in							Percentage of times of being called in	Average number of times called in per SME that called in the legal service provider
	1	2	3	4	5	6-10	>10		
Bailiff	35.7	18.2	8.7	8.6	9.3	12.2	7.1	23.5	6.5
Industry association	25.5	26.9	12.8	8.2	11.2	9.4	6.0	21.9	4.2
Lawyer	40.9	22.1	12.5	8.2	4.5	10.4	1.5	16.9	3.2
Legal advisor	38.1	25.2	12.8	9.4	5.0	7.1	2.4	13.1	3.1
Police	53.6	21.9	9.9	3.9	3.9	5.6	1.2	8.9	2.5
Courts	62.0	20.8	9.4	1.3	0.7	4.8	1.0	6.5	3.3
Other	15.9	18.8	12.9	16.7	11.0	14.4	10.3	4.3	6.1
Legal expenses insurance	64.2	23.4	5.7	3.4	0.2	2.8	0.3	3.0	1.7
Mediator	61.4	15.6	17.7	4.5	0	0.8	0	0.8	1.7
Arbitrator	78.6	9.1	7.5	0	0	4.8	0	0.6	1.5
Conciliation service	75.8	6.7	16.7	0	0.8	0	0	0.4	1.4

Source: WODC data file.

In some cases, it is obvious that the legal service provider was called in for help and not to provide information: the courts, arbiters, mediators and conciliation services are engaged to obtain a decision, not to enlighten SMEs about their legal position. For the other legal service providers this was, however, less clear, so the respondents that engaged them were asked to indicate why they did so: for help with a serious problem, for information, or for both? Table 16 presents the results. In the majority of cases, the court bailiff, police, legal expenses insurance and the lawyer are approached to provide help, while the industry association is mainly approached to provide information.

Table 16 SMEs and their reason for using different kinds of legal services in 2006 (N=2,097, weighted).

Legal service provider	Help	Information	Help and information
Bailiff	90.0	2.9	7.1
Police	85.9	7.9	6.1
Legal expenses insurance	73.7	11.1	15.2
Lawyer	60.8	10.1	29.1
Other	47.1	17.9	34.9
Legal advisor	30.1	45.1	24.8
Industry association	13.2	68.3	18.5

Source: WODC data file.

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 in our research did so. The trade associations are engaged the most by this group of companies (31.0% of the engagements by this group), followed by legal advisors (18.2% of the engagements), the police (16.8% of the engagements) and lawyers (13.3% of the engagements). Exactly why they relied on these service providers varies; however, trade associations and legal advisors are usually engaged to provide information and not to help with a serious problem.

The incidence and frequency of engaging legal assistance providers look different when the focus shifts to the potential legal problems. In part this is caused by the fact that the legal service providers that we distinguished during the second survey, based on the experiences with the first survey, is slightly different. The arbiter and the conciliation service were removed from the list, while the debt collection agency and the accountant were added. But there are other differences that cannot be explained by differences in the questionnaire. In the case of potential legal problems (Table 17), 12.4% of all SMEs engaged the services of a lawyer, followed by 8.9% that engaged the services of a collection agency, 8.5% that engaged the services of a judge and went to court, and 7.0% that engaged the services of a court bailiff.

Table 17 Incidence of using legal service providers by SMEs with potential legal problems in 2006 (N=660, weighted).

Legal service provider	Percentage
Lawyer	12.4
Debt collection agency	8.9
Courts	8.5
Bailiff	7.0
Accountant	5.2
Legal expenses insurance	5.0
Industry association	4.9
Police	4.4
Legal advisor	3.9
Other	1.9
Mediator	1.6
Total	25.8

Source: WODC data file.

As regards the frequency of an engagement in the event of potential legal problems in 2006, the collection agency was the most important legal service 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). Table 18 gives an overview of the frequency of engaging the different legal service providers. Apart from the court bailiff and the debt collection agency, the SMEs engaged the legal service providers in the majority of the cases only once during 2006. The average number of times a legal service provider was engaged by the SMEs makes clear that, on average, only the police, the debt collection agency and the bailiff were engaged more than three times.

Table 18 Frequency using legal service providers by SMEs with potential legal problems in 2006 (N=660, weighted).

Legal service provider	Frequency of being called in by SMEs							Average number of times called in per SME that called in the legal service provider
	1	2	3	4	5	6-10	>10	
Bailiff	39.5	24.7	14.3	6.7	2.7	5.2	6.9	4.6
Debt collection agency	46.6	10.2	13.3	7.5	6.5	10.3	5.6	4.2
Police	50.6	17.5	15.7	5.0	4.6	4.3	2.5	3.2
Legal expenses insurance	61.5	16.5	7.6	4.0	3.3	4.5	2.6	2.8
Lawyer	54.2	18.7	7.9	3.2	4.0	5.2	2.8	2.6
Accountant	58.1	13.2	16.7	5.0	2.0	4.8	0.2	2.1
Industry association	51.3	28.4	8.6	6.7	1.4	2.4	1.3	2.0
Courts	64.4	19.0	8.1	3.0	2.0	0.8	2.6	1.9
Legal advisor	69.9	11.1	8.2	6.8	2.8	0.1	1.1	1.8
Other	79.5	2.1	12.0	6.4	0.2	0	0	1.5
Mediator	82.6	13.4	3.5	0.6	0	0	0	1.2

Source: WODC data file.

10. Legal services not engaged

In the event of potential legal problems, some SMEs chose not to engage legal service providers. The potential legal problems for which SMEs did not seek the help of legal service providers were problems with other companies regarding the quality, quantity or delivery time of purchased goods or services: three quarters of the SMEs confronted therewith did not engage legal service providers at all. What were the reasons for not engaging the providers? Table 19 gives an overview, distinguishing between 'did not think of it'; 'the problem was too unimportant'; 'engaging legal service providers costs too much time', 'the opponent is penniless', therefore he cannot be forced to pay; 'engaging legal service providers costs too much money'; 'engaging legal service providers would not change anything'; 'the problem with the opponent was already solved' and 'other' reasons.

The most common reason for not engaging legal service providers was that the parties had solved the potential legal problems themselves: 33.9% of the reasons provided related to this solution. In the case of potential legal problems regarding the quality, quantity and delivery time of goods and services sold or the payment for goods and services bought, both problems that are 'caused' by the SMEs themselves, the majority of the reasons given for not engaging legal service providers was that the problem had already been solved. However, Table 19 also makes clear that solving the problems is less likely with some potential legal problem categories. Unsurprisingly, this is the case with serious kinds of crime and fraud, not just because in many cases the perpetrator will be unknown, but also because these problems are likely to result in criminal prosecutions, proceedings in which the victimized party only plays a minor role. This is also the case, however, with problems regarding applications for permits and taxes, customs and duties.

Other relatively often mentioned reasons for not engaging legal service providers in case of potential legal problems were the costs (time and money) involved in such an engagement. 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 often occur that the respondents indicated that they considered the matter to be unimportant: only 7.5% of the explanations could be interpreted as such. This is emphasized by the fact that the respondents only rarely indicated that they had not considered engaging legal assistance providers.

Table 19 Frequency of reasons for not using legal service providers while having potential legal problems (N=580, weighted).

Kind of problem	Reason not to use legal service (row percentages)								
	Did not think of it	Too unimportant	Costs too much time	Opponent is penniless	Costs too much money	Useless	Problem already solved	Other	Total
Payment for goods and services sold	0.5	6.6	14.4	13.7	15.8	7.1	30.3	11.6	100 (31.0)
Quality, quantity and delivery time of goods and services sold	2.5	7.5	14.0	3.8	6.8	9.7	52.4	3.3	100 (11.7)
Labour conditions, wages and the laying off of workers	0	7.5	14.8	0.6	14.2	1.8	41.5	19.6	100 (5.1)
Applying for Permits	0	12.3	17.6	0	2.0	21.4	24.3	22.4	100 (7.7)
Taxes, customs and duties	0	4.3	8.0	0	6.4	13.7	27.9	39.7	100 (4.4)
Payment for goods and services bought	0	3.4	13.2	8.0	18.8	2.9	50.4	3.4	100 (6.4)
Quality, quantity and delivery time of goods and services bought	1.1	12.0	13.5	0	9.0	5.4	41.6	17.4	100 (13.2)
Liability for and settlement of damage	0	0.3	12.0	5.3	14.9	5.0	44.8	17.7	100 (8.5)
Serious kinds of crime and fraud	3.9	11.2	18.4	8.3	6.7	21.6	5.3	24.7	100 (12.1)
Totals	1.1	7.6	14.4	6.7	11.3	9.6	33.9	15.4	100 (100)

Source: WODC data file.

11. Customary termination of problems

When asked about the way in which companies usually resolve their potential legal problems, 58.7% of the SMEs stated that they do so by means of an agreement with the other party. However, this does not mean that 58.7% of the potential legal problems result in an agreement, because the underlying number of problems has not been taken into account. It nevertheless provides an indication of the importance of the agreement as a way to wrap up potential legal problems. This is especially the case with the potential legal problems relating to taxes, customs and duties, and to the quality, quantity and delivery time of goods and services sold. A court decision appears to be the second most important way of ending potential legal problems. Table 20 gives an overview.

Table 20 Ways generally used to terminate potential legal problems I (N=734, weighted).

Kind of problem	Ways of terminating problems (row percentage)				Totals
	Verdict by Judge	Other verdict	Agreement	Other	
Payment for goods and services sold	24.5	2.2	59.7	13.6	100 (41.8)
Quality, quantity and delivery time of goods and services sold	4.7	0	82.6	12.7	100 (7.1)
Labour conditions, wages and the laying off of workers	34.4	6.9	47.0	11.7	100 (14.3)
Applying for permits	8.9	6.0	58.5	26.6	100 (4.5)
Taxes, customs and duties	11.9	0.4	83.3	4.3	100 (5.1)
Payment for goods and Services bought	16.9	0	71.8	11.3	100 (3.6)
Quality, quantity and delivery time of goods and services bought	8.2	0	67.3	24.6	100 (8.3)
Liability for and settlement of Damage	12.4	4.4	61.8	21.4	100 (7.1)
Serious kinds of crime and Fraud	22.3	6.6	20.2	50.9	100 (8.2)
Totals	20.5	3.0	58.7	17.8	100 (100)

Source: WODC data file.

Table 21 uses the same numbers, but this time it distinguishes between the different opponents that the SMEs with potential legal problems are confronted with. This table makes clear that especially problems with the government, individuals and also other companies are usually terminated with an agreement. The examples of Apple's way of doing business at the beginning of this article are therefore not exemplary. A court verdict is the most common way of ending problems with employees. However, since the court has to permit the SMEs to terminate employment contracts, this is not much of a surprise.

Table 21 Ways generally used to terminate potential legal problems II (N=734, weighted).

Kind of opponent	Ways to terminate problems (row percentage)				Totals
	Verdict by judge	Other verdict	Agreement	Other	
Companies	20.4	2.0	60.8	16.8	100 (45.2)
Individuals	15.3	1.5	69.2	14.0	100 (18.9)
The government	13.4	2.5	72.0	12.1	100 (11.7)
Other organizations	15.5	2.1	64.8	17.6	100 (2.0)
Employees	31.3	6.3	50.1	12.2	100 (15.6)
Other legal entities	24.1	8.1	8.4	59.5	100 (6.6)
Totals	20.5	3.0	58.7	17.8	100 (100)

Source: WODC data file.

12. Experiences with legal service providers

The respondents were finally asked about their general opinion concerning the operation of the service providers engaged by them. Table 22 presents the results. The average valuation of the functioning of the legal assistance providers, in general or with respect to the role they played in ending the potential 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 organizations and the dispute committees (valued with a 3.9 each) and the legal advisors (valued with a 3.8) score relatively highly with respect to the general question about their operation. In particular the courts, the police and arbiters score relatively lowly (each scoring a 3.2).

Table 22 Opinions about the functioning of legal service providers (N=2,808, weighted).

Legal service provider	Opinion (row percentage)						Total	Average
	Very negative	Negative	Neutral	Positive	Very positive	No opinion		
Industry association	1.8	4.0	6.2	73.7	13.6	0.7	100 (19.4)	3.9
Conciliation service	2.0	3.9	9.6	68.1	11.5	14.9	100 (1.0)	3.9
Legal advisor	2.0	4.8	15.2	66.4	8.9	2.8	100 (15.1)	3.8
Other	2.8	8.8	13.8	56.3	7.2	11.1	100 (2.7)	3.6
Lawyer	4.2	14.5	16.6	57.3	6.4	1.0	100 (19.2)	3.5
Legal expenses insurance	7.6	12.8	15.0	54.0	10.1	0.4	100 (6.5)	3.5
Mediator	5.4	14.9	20.4	49.9	7.0	2.3	100 (1.7)	3.4
Bailiff	5.7	20.5	13.7	54.0	4.6	1.4	100 (13.1)	3.3
Arbitrator	6.2	17.0	25.7	45.4	3.8	1.8	100 (1.4)	3.2
Police	7.9	20.4	15.8	49.8	5.2	0.8	100 (12.9)	3.2
Courts	7.5	23.2	16.1	42.5	7.0	3.7	100 (7.1)	3.2
Totals	4.5	12.8	13.8	59.0	8.1	1.8	100 (100)	3.5

Source: WODC data file.

When asked about their opinion regarding the role of the legal service providers in ending the potential legal problems which the SMEs were dealing with, the results are slightly different. Table 23 present the results. The accountant (4.2), the mediator and the trade organizations (both 4.0) score relatively highly. The police (2.9) and debt collection agencies (3.4) score fairly lowly.

Table 23 Opinions about the role of the legal service provider in ending potential legal problems (N=707, weighted).

Legal service provider	Opinions (row percentage)						Total	Average score
	Very dissatisfied	Dissatisfied	Neutral	Satisfied	Very satisfied	No opinion		
Accountant	0.2	7.6	6.0	51.2	32.8	2.2	100 (13.2)	4.2
Industry association	2.5	9.4	10.5	45.0	30.9	1.7	100 (12.3)	4.0
Mediator	3.0	6.1	13.6	47.9	27.7	1.7	100 (4.0)	4.0
Lawyer	2.6	10.4	5.6	54.8	25.7	1.0	100 (31.4)	3.9
Legal advisor	3.9	2.1	10.0	68.9	14.4	0.6	100 (10.0)	3.9
Legal expenses insurance	5.2	11.3	12.5	47.5	23.3	0.2	100 (12.6)	3.7
Bailiff	5.5	16.3	15.1	47.1	11.7	4.1	100 (17.5)	3.6
Courts	7.4	12.5	15.2	46.3	11.4	7.2	100 (21.4)	3.6

Legal service provider	Opinions (row percentage)							Average score
	Very dissatisfied	Dissatisfied	Neutral	Satisfied	Very satisfied	No opinion	Total	
Debt collection agency	9.4	16.6	15.1	43.7	13.6	1.3	100 (22.2)	3.4
Police	20.0	23.5	13.2	33.6	9.5	0.2	100 (11.2)	2.9
Total	7.5	13.5	13.3	42.7	19.9	3.1	100 (100)	3.6

Source: WODC data file.

13. Discussion

In this article, we have given an overview regarding the serious and potential legal problems that SMEs encounter in the Netherlands and the ways in which they deal with these problems. Based on two surveys pertaining to 2006, the incidence and frequency of the different kinds of problems have been presented; the concurrence of problems; the association of characteristics of companies with the likelihood that they are presented with problems; the nature of the opponents; the incidence and frequency of resorting to legal service providers by the SMEs, and their evaluation of the performance of these legal service providers. To conclude, some of the results presented above will be compared to the results of the empirical research summarized in Section 2 to point out similarities and dissimilarities and avenues for further research.

In the case of the British companies that were party to an intellectual property dispute, many problems never came to court. Even when this was the case, a settlement was reached in 40% of the cases listed in the Patents Courts. In only 50% of the cases listed did the court deliver a verdict. That potential legal cases do not result in a verdict but are settled instead, with or without the help of a lawyer, is not only the case with intellectual property disputes. As the previous pages have shown, an agreement with the opponent is for SMEs the most common way to terminate potential legal problems. This was especially the case when the problem concerned the quality, quantity and/or delivery time of goods or services that the SME itself was selling or when the opponent was either the government or a private individual. This does not mean, however, that court decisions are not important because in the shadow of the law the threat of a verdict is always there. This does not mean, however, that this threat is the same and carries the same weight in each and every problem with each and every opposing party. It would be interesting to know to what extent potential outcomes of potential legal procedures play a role in different kinds of problems with different kinds of opponents, especially in a context where governments, like the Dutch government, aim to reduce the costs of justice by selectively limiting access to justice.²⁹

When the results of the Chinese research are compared to the Dutch one, it is striking that the Dutch companies report for one year a much higher problem incidence than the Chinese companies for five years: 61.9% of the Dutch companies reported having experienced serious problems in 2006 while only 45.9% of the Chinese companies reported problems for the five years from 2001-2005. Limited to just one year, the problem rate for the Chinese companies would go down to 30.1%: less than half of what the Dutch SMEs reported having experienced in 2006. When on the Dutch side of this last comparison the focus would be on just the potential legal problems that, according to the respondents, could have resulted or did result in legal procedures, while on the Chinese side we still include all reported problems, the figures are more similar: 37.0% for the Dutch SMEs against 30.1% for the Chinese SMEs. These results raise several questions. Are Dutch SMEs more prone to report problems and to consider legal procedures than their Chinese colleagues? Is the access to justice in Hong Kong perhaps less favourable than in the Netherlands? This could mean that Chinese SMEs seek to prevent or defuse potential problems at an earlier stage than Dutch SMEs, resulting in a smaller number of SMEs reporting problems. Or are Dutch SMEs, even according to Chinese standards, really more likely to encounter problems?

²⁹ *Kamerstukken II 2008-2009*, 31 758, no. 3.

When one would consider the Australian study into the business problems of small companies (with less than 20 employees) this appears to be the case. Although the analyses above have shown that the smaller Dutch SMEs are less often confronted with serious or potential legal problems, the percentage that still encounters them is still considerable. When it comes to size, the one-person company is the SME with the lowest risk of serious or potential legal problems: 48.4% and 24.2% per year respectively. Compared to the Australian serious business dispute risk for small companies of 15.1% per five years, this is remarkably high. Even when one would take into account that the Dutch risks refer to problems with all possible opposing parties and the Australian study only refers to problems with other businesses it remains high: the majority (54.6%) of all the potential legal problems that Dutch SMEs reported for 2006 concerned disputes with another company.

This difference in problem incidence rates is not only intriguing, but also quite fundamental. When comparing the results of different jurisdictions and legal cultures, it appears appropriate to start with the incidence and frequency of problems encountered, and try to explain them before turning to a comparison of relying on legal service providers. In the case of Australia the access to justice for small companies does not appear to be an immediate concern³⁰ so a search for an explanation of the remarkable difference in problem incidence rates would not start there.

A final word of caution. Although the results are representative, apart from the SMEs in the agricultural sector, it should be noted that they pertain to only one year, 2006. This year was, economically speaking, a good year. The effects of the financial crisis that started in 2007 and of the subsequent recession, which might still develop into a full-blown depression, had not yet been felt. It therefore appears likely that the results would be different if the survey was repeated today. When it concerns naked survival, it is not unlikely that more managers would be inclined to act like Steve Jobs at the beginning of this article. Further research will have to make that clear.

30 Orima research, *supra* note 19, p. 24.