



EURAVOCAT LAW HANDBOOK

DEBT COLLECTION IN NETHERLAND

From our member in Tilburg



1. Amicable collection

In the extrajudicial phase, the first step is to find out where the debtor is domiciled, by obtaining information from the trade register of the Chamber of Commerce or by requesting an extract from the register of persons in the case of a private debtor. Lawyers in the Netherlands have the right to request an extract

from the register of persons from private individuals as part of the preparation of proceedings. This is followed by sending one or more dunning letters/reminders to the debtor requiring payment of the amount due.

Interest

Legal interest can be claimed on the amount of outstanding invoices from the related due date. Since 1 July 2023, the annual statutory interest rate is 6% for non-commercial transactions or 12% for commercial transactions.

Collection costs

The costs incurred by a debtor to collect a monetary claim that the debtor does not pay of its own accord, may be recovered from the debtor. The law states that such monetary claim may be calculated, using a graduated scale and is subject to a maximum. Parties can agree upon deviation from this graduated scale in their business agreements. In practice, however, a judge can and often will moderate the contractual collection costs to the statutory graduated scale. For consumers, these costs must be announced in a letter and there must be at least 14 days between receipt of this letter and the ability to charge these costs.

2. Judicial Collection

If the amicable phase has not been successful, there are roughly two procedures that can be followed to put pressure on the debtor to reimburse the claim:

a. Bankruptcy proceedings:

This involves an application by the lawyer to the court of the debtor's domicile, requesting that the debtor's bankruptcy be declared due to his inability to pay the related debts. It may be intended as a means of pressure to force the debtor to pay after all. A precondition is that there must be a) a supporting claim, i.e. a second creditor must be known to have a claim against the same debtor and b) the claim must be undisputed.

This procedure is quick, effective, simple and relatively cheap.

b. Conducting proceedings on the merits at the subdistrict or cantonal judge or court. Money claims up to € 25,000 belong to the subdistrict court and above that amount, the district court has the jurisdiction. In the district court, representation by a lawyer is mandatory.

The proceedings on the merits begin with the lawyer drafting a writ of summons, subpoenaing the debtor to appear in court on a defined day. The debtor can then file a written response, which is usually followed by an oral hearing at the court. The parties and their lawyers are then asked to come and talk about the case and see whether it is possible to reach an amicable settlement. This may result in an official court statement containing agreements made. The official court statement, based upon such settlement, has the same legal force as a ruling, formally made by the court. The losing party is ordered to pay the legal costs, which consist of 1) bailiff's fees, 2) court registry fees and 3) lawyer's fees, according to established rates and any expert fees.

Parties can appeal within three months of the judgment. Litigation in the Netherlands is effective, not particularly expensive and relatively quick compared to other countries.

Execution phase

Once a judgement has been obtained on the debtor, this can be enforced by the bailiff. The bailiff has several options for doing so. For instance, he can inquire where the debtor has bank accounts and whether there is a positive balance. The bailiff can also seize real estate, bank accounts, inventory, stocks, or vehicles of the debtor. Nowadays, the bailiff can quite easily attach a vehicle by entering it in the national vehicle registration register of the RDW, thus preventing the car from changing ownership. Moreover, after a declaration by the bailiff, the car can be seized by the police if necessary.

3. Insolvency of the debtor

The debtor may be declared insolvent as a result of a) an appeal to the statutory debt rescheduling (WSNP), if the debtor is a natural person, or b) an appeal to the Private Arrangement Homologation Act (WHOA), whereby creditors are forced to cooperate in a private arrangement, or c) a normal bankruptcy. The claim must then be submitted to the administrator or trustee for recognition. This can be done with a simple letter. In many cases, however, no distribution takes place, due to insufficient funds to pay the unsecured creditors.

The claims of the government, such as the tax authorities or the receiver, are preferential, i.e. these are given priority if a distribution follows.

Retention of title and right of claim or recourse

Finally, if the debtor fails to pay on time, the creditor can invoke the right of recourse, "recht van reclame". The right of claim is the seller's legal right to claim the sold movable item as his property in case of non-payment, provided that the item is still in the original condition in the hands of the buyer. This is a right incorporated into law in Article 7:39 of the Civil Code. It can only be invoked if less than six weeks have passed since the invoice amount became due or more than 60 days have passed, since the day the goods were actually delivered.

The second possibility is to invoke retention of title. However, this must be agreed in writing in, for example, a contract or general terms and conditions.

Both rights also apply in case of bankruptcy of the debtor.

More information on debt collection in the Netherlands

Do you have a problem with a Dutch company regarding one of your outstanding invoices? I have been a specialist in international debt collection and commercial litigation for over 30 years. Please feel free to contact me for a price quotation for your case.

OCTOBER 2023

For more information:

@VAN ROOIJ & PIJNACKER ADVOCATEN

Bredaseweg 204-13

5038 NK Tilburg, Netherlands

Phone: +31 / 13-5433162

Fax: +31/ 13-5423785

Email: vanrooij@vrp-advocaten.nl

URL : www.vrp-advocaten.nl