

DEBT RECOVERY IN THE NETHERLANDS

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Introduction

Extra-judicial and judicial proceedings related to the collection of a debt are conducted in the following manner according to Dutch Law. Also included, is a broad outline of the enforcement proceedings available to the creditor.

Prior to initiating legal action

Essential information

The following information is required in order to assess the case, and before the commencement of any legal action:

- name, address, and legal form of creditor and debtor;
- registration number of the debtor (which can be obtained at the trade register of the Chamber of Commerce);
- copies of outstanding invoices, demand for payment, dunning, or demand letters, and possible responses by the debtor;
- the applicable provisions and information on which the claim is founded.

Extra-judicial phase

Claims which are not disputed by the debtor are subject to collection procedures.

In order to assess the solvency of the debtor, private investigations bureaus may be employed, although there are no official nor publicly accessible sources of data. The statutory term of prescription for trade receivables is five years.

First, the creditor should demand payment within a certain term. Usually the creditor has already written one of several such letters to demand payment. The second step involves writing a demand letter adding the creditor's right to claim statutory interest, the contractual interest as agreed between the parties and extra judicial costs.

If payment does not follow within the term set, the creditor is free to take the matter to court. However, it is recommended that the creditor first send the writ of summons to the debtor before having it served. That way, the debtor is offered a last chance to fulfill his or her payment obligations, and proceedings before the court can be avoided.

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Legal proceedings

In most instances, the *rechtbank* (district court) is the competent court of first instance. If, however, the claim does not exceed € 5.000,00 or is based on an employment contract, a labor agreement, an early retirement scheme, an agency agreement, a tenancy agreement, or hire-purchase, the *rechtbank, sector kanton* (sub district court) may hear the case. One should be sure to add the legal interest and possible contractual interest due up until the date of the summons to the amount of the claim.

The main difference between these two courts is that a party must be represented by a lawyer and procurator before the *rechtbank*, whereas such a requirement does not exist before the *rechtbank, sector kanton*.

The plaintiff commences an action by having a bailiff serve a writ of summons. The cost of calling in a bailiff is € 70,40 excluding VAT. Usually, it is not necessary for the debtor to appear before court. Instead, an answer to the claim in writing will suffice.

Often, the debtor will neither defend against the claim nor appear before the court, in which case, a judgment by default is given within a two-week period by the *rechtbank, sector kanton* and within four weeks by the *rechtbank*.

If the defendant answers the claim or appears before court, the court will set a time for him or her to prepare a statement of defense. Then the court will schedule a personal appearance by both parties to obtain more information and to see if settlement of the case is possible. If there is little likelihood that the parties will come to an agreement, the court can pass judgment immediately, or give the plaintiff the opportunity to deliver a replication, after which the defendant can reply by rejoinder. On average, proceedings will take at least one year.

In an urgent interest in the claim can be made, the claim can also be submitted to interim injunction procedures, in which case, a judgment can be obtained within a very short period of time, usually two to four weeks, if the defendant does not appear.

Prejudgment seizure and execution

After the creditor's claim has been awarded, the notice of judgment is served to the defendant by a bailiff. The debtor will be given two days to comply before any further legal actions are taken.

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According to Dutch law, there is the possibility of prejudgment seizure. The *voorzieningenrechter* (judge) of the *rechtbank* must hear the request. Before submitting the case to court, a prejudgment seizure can be requested by the creditor. The *voorzieningenrechter* decides after brief examination, and usually without hearing. When the request is granted, (which usually happens) the case must be submitted to the court within a period of time set by the judge (a minimum of eight days).

All movable and immovable assets of the debtor are subject to prejudgment seizure, including receivables, such as the balance of his or her bank account. When a prejudgment seizure has been levied, this seizure automatically becomes a seizure in execution, if the claim is awarded.

Costs of the proceedings

When the claim is allowed, the defendant will be ordered to pay a certain portion of the costs of the proceedings. These costs include legal assistance, the costs of the bailiff, and the court registry fees. The cost of legal assistance is determined on the basis of the so-called *liquidatietarief* (scale of liquidation), which awards a fixed number of points for each activity, the value of each point determined by the amount of the claim. This scale of liquidation results in a fixed sum, which does not reflect the real cost to the client and is usually far below.

For example:

Having a bailiff serve a writ of summons costs € 70,40 excluding VAT. If the claim does not exceed € 4.538,00 a maximum of five points is allowed for the cost of legal assistance, where each point is worth € 227,00. The statement of claim is worth one point. The personal appearance is worth one point. The reply by rejoinder is worth one point. This adds up to three points together € 681,00. Having the bailiff serve the notice of judgment costs € 67,76. The court registry fees are € 190,00. Thus, in this case the defendant can be ordered to pay a maximum of € 1.009,16 of the costs of the proceedings.

Costs of legal assistance

Goedkoop & Partners Advocaten applies a rate of 15% of the amount recovered, excluding 6% for office expenses and a 19% VAT. The extra-judicial costs claimed and paid are due to Goedkoop & Partners. The same applies to the costs of proceedings awarded after judgment. Therefore, the costs of legal assistance for the client will never exceed 15% of the amount recovered. There are no costs for the client if the recovery is not successful, apart from the costs due to third parties such as the bailiff and the court registry fees.

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Legal or contractual interest recovered, is of course, due to the client. The above rate does not include the costs of prejudgment seizure or filing for bankruptcy.

Alternatively, the special rate for debt collection procedures, according tot the standard set by the Netherlands Bar, can be agreed upon. This rate is graduated, and is dependent on the amount of the claim, whether or not successfully recovered, according to the table below:

| | | |
|----------------------|-------------|-----|
| For an amount up to | € 2.950,00 | 15% |
| For any excess up to | € 5.900,00 | 10% |
| For any excess up to | € 14.748,00 | 8% |
| For any excess up to | € 58.990,00 | 5% |
| For any excess above | € 58.990,00 | 3% |

Filing for bankruptcy against the debtor can be an appropriate way of coercion. Bankruptcy proceedings begin when the creditor files a petition for bankruptcy. Apart from the specified claim of the petitioner, there must be two other support claims. Specification of the latter is not a prerequisite, though it is recommended. Other than as a means of coercion, filing for bankruptcy is not generally recommended because in 95% of cases, there is no distribution to creditors. The costs will amount to approximately three hours of legal assistance with an hourly rate of € 155,00 excluding 6% for office expenses and a 19% VAT plus the amount of € 241,00 court registry fees.

When the court considers the debtor to have ceased paying his or her debts, he or she will be declared bankrupt. Consequently, a trustee in bankruptcy will be appointed. Bankruptcy, according to Dutch law, can be classified as a general seizure of the debtor's property. As a result, all earlier seizures and ongoing judicial proceedings are cancelled. Preference is given to so-called estate creditors and other creditors who have claims due before the date of the bankruptcy. Specific rules apply when the debtor is a private person.

EEX

The Netherlands is party tot the EEC Execution Treaty. This treaty provides rules regarding the recognition and execution of judicial decisions of member states, as well as provisions for determining the international jurisdiction of judges. It provides a simple and quick procedure for applying a grant of execution of judgments, passed by any court within the European Union. Countries that became members of the European Community automatically became party to this treaty.

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On the first of March 2002, this treaty was replaced by the EEX regulation for all EU member states except Denmark. When a country becomes a member of the European Union, it automatically accepts all the EU rules, including the EEX regulation. This regulation has taken over almost all of the provisions of the EEC Execution Treaty. The regulation is not applicable with respect to bankruptcy proceedings. The costs of the proceedings necessary to obtain permission to execute a verdict in The Netherlands are approximately € 1.000,00 including court registry fees.

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