

Debt Recovery in The Netherlands

You have performed services for or delivered products to a customer located in The Netherlands. You have invoiced your services or products, but your customer fails to pay these invoices. What can we do for you do in order to recover the debt concerned from this customer in The Netherlands?

The principal steps required in connection with debt recovery in The Netherlands and the basic legal instruments available may be summarized as follows.

Check the corporate status of the debtor. In case a debtor does no longer exist or has been declared bankrupt, recovery proceedings may be a waste of your money. Information on the corporate structure may be obtained from the Dutch trade register. The Dutch Courts Registry may confirm whether bankruptcy proceedings have been opened against the debtor;

Check the financial status of the debtor. The Dutch trade register may provide a publication version of annual accounts of the debtor, if available. The Dutch Land Register may provide information on any real estate owned by the debtor. However, other public sources of information on the financial status of a debtor do not exist in The Netherlands;

Send a final notice of default, in which the debtor is summoned to pay the principal sum with legal interest and collection costs, within a period of two weeks, and in which the filing of legal proceedings will be announced failing payment;

Consider making pre-litigation seizures of assets owned by the debtor, or claims of the debtor vis-à-vis of third parties. In The Netherlands, a pre-litigation seizure requires the prior authorization of the competent Court. It may only be considered in case there is specific documentary evidence of such (non-mortgaged) assets or claims.

In case the debtor has explicitly confirmed the debt, or has not contested it following the final notice of default, you may consider either filing a request for bankruptcy of the creditor or request the competent injunctions court to issue an immediately enforceable payment injunction against the debtor (*'incasso-kort geding'*).

The filing of a request for bankruptcy of a debtor in case of an uncontested debt is a pragmatic and cost effective collection instrument often used in The Netherlands. A debtor who is not insolvent may wish to avoid bankruptcy and may make a payment offer following the filing of a bankruptcy request. A debtor who is in fact insolvent will be declared bankrupt, and costly collection proceedings will be avoided.

A request for bankruptcy is typically heard by the court within several weeks from filing, and a decision is typically issued soon after that. A bankruptcy order may however only be issued in case the creditor demonstrates that the debtor fails to pay more than one creditor.

In case the debtor has contested the debt, and is not prepared to negotiate or accept a reasonable settlement, you may consider filing a claim for payment of the principal debt with legal interest and

legal costs with the competent court. Although court proceedings in The Netherlands are handled efficiently and rapidly in comparison to those in many other European Union member states, the duration and total costs of these proceedings will largely depend on the defense presented by the debtor. Typically, in case of not too complicated matters, Dutch courts in first instance issue a (preliminary) decision within one year from filing of the case.

KerkmanLaw has many years of experience in debt recovery in The Netherlands, and has represented many international businesses in collecting debt from debtors located in The Netherlands. We will be delighted to advise your company on the legal possibilities of out-of-court or in-court recovery of your claims from debtors in The Netherlands.

Please note that the above is a resume and does not constitute legal advice in any individual case.

We recommend that you obtain advice from a lawyer specialized in Dutch law in case you wish to be informed in detail of the possibilities of debt recovery in The Netherlands.