

Collection Profile The Netherlands

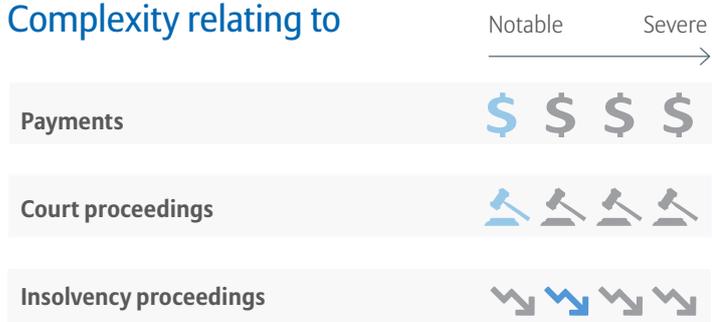
Collecting in The Netherlands

- The paying behavior of domestic companies is very good with payment normally taking place within 47 days; however the rules that implement the latest EU Directive on late payments are less demanding than the EU standards.
- In practice, although the courts are reliable, negotiating payment instalments is often the most efficient way to avoid unnecessary costs and a specialized collection agency may often suffice to obtain payment.
- When the debtor has become insolvent, debt renegotiation mechanisms are available but remain inefficient and unused, while most bankruptcies are terminated without any payments of dividends to unsecured creditors.

Collection complexity



Complexity relating to



Contents

- General Information 3**
 - Availability of financial information..... 3
 - Main corporate structures..... 3
 - Regulatory environment..... 3

- Getting Paid..... 4**
 - Days Sales Outstanding (DSO) 4
 - Late payment interest..... 4
 - Debt collection costs..... 4
 - Ownership protection 4
 - Payments..... 4

- Collecting Overdues 5**
 - Amicable action 5
 - Legal action..... 5
 - Alternatives to legal action 6

- Handling Insolvent Debtors 8**
 - Insolvency proceedings 8



General information

Availability of financial information

Financial information on domestic companies is generally available. Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. The grades represent a core of our knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

Main corporate structures

Liability for business debts is determined by legal structures, which may be described as follows:

- Sole Proprietorship is available for small businesses managed by an individual and for which no commercial structure is necessary. In this case, the owner is held liable for all business debts. Two or more individuals may also decide to share ownership and responsibilities through Partnerships (Vennootschap Onder Firma, VOF), in which case the partners may be jointly and individually liable for the actions of the other partners. Limited Liability Partnerships (Commanditaire Vennootschap, CV) may alternatively offer limited liability to the partners.
- Private Limited Liability Companies (Besloten Vennootschap met beperkte aansprakelijkheid, BV) represent the great majority of businesses in the Netherlands since they require no minimal capital funds (EUR 18,000 prior to October 2012) while the partners' liability is limited to their contribution. Public Limited Liability Companies (Naamloze Vennootschap, NV) are used for larger structures willing to divide their capital (at least EUR 45,000) into tradable shares. In these entities, the shareholders' liability is of course limited to the value of their shares.
- Foreign companies may alternatively settle in the Netherlands through Branch Offices which provide no liability limitations to the foreign parent company. Joint Ventures may take the form of any legal structure listed above, but incorporation is not necessary, so a contract drafted for this purpose would suffice.

Regulatory environment

The Netherlands has a Civil Law system in which the rules are codified rather than based on the case law. The judiciary is built upon various courts of general jurisdiction which deal with claims taking the amounts at stake into account rather than on a subject matter basis. County Courts (Kantongerecht) would normally deal with small claims of up to EUR 25,000, while claims in excess of this amount would fall under the jurisdiction of District Courts (Rechtbank). The Court of Appeal (Gerechtshof) would then be competent in second instance, while the Supreme Court (Hoge Raad) is the court of final jurisdiction.



Days Sales Outstanding (DSO): The paying behavior of domestic companies is very good, with payments normally taking place within 47 days, or following delivery.



Getting Paid

Days Sales Outstanding (DSO)

The paying behavior of Dutch domestic companies is excellent and payments normally take place within 47 days (2016 figures), or following delivery. Delays of up to 14 days may be expected but these remain rare and may be explained by the fact that, as a result of a lack of banking support, domestic companies sometimes use payment delays as a means to manage cash flow.

Late payment Interest

The EU Directive 2011/7/EU which stipulates that payments in the EU must be made within 60 days was expectedly transposed into Dutch law on 16 March 2013 through a new Act limiting the provisions of the Dutch Civil Code on contractual payment deadline.

By contrast with other EU Member States, the implementing law is not stricter than the Directive requirements: payment in business-to-business transactions cannot exceed 60 days unless an agreement between the parties expressly stipulates otherwise (and as long as the arrangement is not grossly unfair). Under the Act, interest for late payment ought to be calculated on the basis of the European Central Bank's reference rate, increased by at least 8 percentage points (against 7 with the former rule).

Debt collection costs

Under the new Section 96 of the Dutch Civil Code, the creditor is also entitled to receive a flat EUR 40 sum to compensate for its collection costs and, if the debt is collected by a third party for collection, the debtor may additionally be held liable for such costs.

In practice, however, the terms and conditions of the creditor are used as a basis while calculating collection costs and interest. Only if there are no terms and conditions, or if they were not agreed properly, the (lower) legal tariffs of the Dutch Civil Code will be applicable.

As a general rule, Dutch businesses have no problem using interest and costs as negotiation tools, but would always bear in mind the potentially negative impact on the on-going business relationship.

Ownership protection

Retention of Title (RoT) agreements, aiming at preserving ownership over goods until the related invoice is paid in full, is admitted under Dutch law. The 'recht van reclame' indeed allows a creditor to request the cancellation of a contract (as well as the return of the goods) in case the related invoice is left unpaid, but an extended form of RoT may also allow retaining ownership over the goods until all the invoices due to the creditor have been paid in full.

In most countries, RoT agreements are mainly used in relation to insolvency proceedings as a means to obtain a form of priority over other debtors. In the Netherlands, in addition, RoT may be used as a negotiation tool during the pre-legal action phase insofar as the supplier can ask his buyer to return the goods based on the General Terms & Conditions and then make a credit note for the returned goods. If the buyer doesn't want to cooperate amicably, the supplier



Late payment interest:

Payment in business-to-business transactions cannot exceed 60 days unless an agreement between the parties stipulates otherwise.



needs to go to court, but the RoT may be triggered again. The debtor may normally oppose this mechanism within six weeks from the due date of the invoice.

Payments

The most common payment methods are as follows:

Bank transfers (bankgiro) are among the most popular payment means for international transactions as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. For export transactions, transfers are usually guaranteed through Export Credit Insurance, which helps minimize the risk of sudden or unexpected customer insolvency. Euler Hermes' worldwide network of risk offices monitors the financial well-being of customers and grants them a specific credit limit up to which clients may trade and claim should something go wrong. Alternatively, Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) are often used in relation to export shipment transactions because they constitute reliable guarantees, which can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment. Also, irrevocable and confirmed Documentary Letters of Credit (a debtor guarantees that a certain amount of money is made available to a beneficiary through a bank once certain terms specifically agreed by the parties have been met) are increasingly relied upon. Bank guarantees may be costly, checks are not commonly used as they offer no guarantees if left unpaid, and bills of exchange constitute debt recognition titles, which remain rarely used insofar as they tend to be interpreted as a lack of trust.

Collecting overdues

Amicable action

Negotiating

Although domestic tribunals are efficient, amicable settlement opportunities should always be considered as an alternative to formal proceedings. In addition, before starting legal proceedings against a debtor, assessment of assets is important as it allows verification as to whether the company is still active and whether recovery chances are at best. In addition, it is essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it indeed becomes impossible to enforce a debt (see below).

Warning the debtor of a decision to take legal action is not mandatory, though it remains advisable to commence legal dunning with a registered Demand Letter recalling the debtor's obligation to pay the principal together with late payment interests (as contractually agreed or taking a legal rate as a reference). Indeed, domestic courts tend to request proof that the parties have attempted an amicable settlement before initiating formal legal action. Furthermore, negotiating payment instalments is often a fairly easy way to avoid unnecessary costs and having a collection agency may often suffice in obtaining payment.

Legal action

Ordinary proceedings

The parties may first have a simplified fast-track (kantongerecht) alternative to ordinary legal proceedings, but this normally requires that the debt (below EUR 25,000) be certain and undisputed. Of course, threatening the debtor to initiate insolvency procedures may also prove efficient as long as one or two creditors own(s) a minimum of two certain and undisputed claims against the debtor. In such situations, the debtors would usually react rapidly and propose payment instalment plans.

When the debtor company has assets in other EU Member States, a European Payment Order procedure facilitating the recovery of undisputed debts (under Regulation EC No 1896/2006) may furthermore be triggered. In this case, the demanding party may request a domestic court to issue an Order to Pay which will then be enforceable in all European Union countries (except Denmark) without exequatur proceedings.

Ordinary legal action would otherwise commence when amicable collection has failed. The creditor would serve the debtor with summons through a bailiff and the debtor would normally be given six weeks to file a defense (failure to do so would allow the court to issue a default judgment). The court would then call a meeting and consider their arguments prior to rendering a decision. In complex cases, further hearings may take place.



Necessary documents

When the initial amount is less than EUR 5,000 and the debt is left unpaid in the amicable phase, a bailiff will normally be used to start a lawsuit. It would therefore be important to provide various documents, such as:

Copies of all outstanding invoices, a recent statement of account, copy of the applicable general terms and conditions, orders (additional), order confirmation (additional), proof of delivery (additional).

Time limitations

Commercial claims must normally be brought to court within five years.

Precautionary measures

Precautionary measures (Kort Geding) may help preserve the debtor's interests pending a final decision. In urgent matters, the District Courts may order same-day ex parte (i.e. in the debtor's absence) interim measures aiming at protecting assets (attachment orders, restraining orders). The claimant must however demonstrate that they have a strong case and that ordering such measures would prevent the occurrence of irreparable harm. In theory, these orders are provisional and must be confirmed by a final decision, but in practice the courts often accept them as binding.

Lodging an appeal

Decisions rendered in first instance may be brought to the Court of Appeal within three months of notification of the judgment to the parties. The court often renders its decisions through summary proceedings, taking both questions of fact and law into account. Decisions rendered in second instance may also be appealed against before the Supreme Court, which strictly focuses on legal issues.

Enforcing court decisions

A judgment is immediately enforceable by a bailiff as soon as it becomes final (i.e. when all appeal venues have been exhausted), however, in practice, enforcement may also become preventive even though the judgment is not yet final.

If the debtor fails to satisfy the judgment, it is possible to request a mandatory enforcement order from the court, in the form of an attachment order.

How long could legal action take?

Undisputed cases that are brought to the County Court (Kantongerecht) or the District Court (Rechtbank) will take approximately one month. If the case is disputed, however, the courts could give a judgment within one year.

In principle, domestic courts do not take longer to deal with cases involving a foreign party than to deal with cases involving domestic parties only. In practice, some extra delays may nonetheless occur depending on the complexity of each case, for instance if a complex foreign law rules the transaction, if foreign witnesses or experts must be heard, etc.

How much could this cost?

As a general rule, the defeated party would be required to pay part of the court and legal costs incurred to the successful party.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Alternative Dispute Resolution methods are rather uncommon in the Netherlands because the courts are efficient in delivering timely decisions.

Arbitration is sometimes obligatory (depending on the Terms & Conditions of the creditor), but proceedings may remain very costly and would only reduce delays in complex and defended cases.

When complex international transactions are involved, international arbitration may also be considered. In non-defended cases, proceedings before the court are rather advisable.

Foreign forums

For the same reason, use of foreign courts is very uncommon, though the parties may nonetheless decide to apply a foreign law to their contract. The Netherlands is a signatory to the Rome I Regulation on the law applicable to contractual obligations, which stipulates that the parties in a contract may, by mutual agreement, choose the law applicable to the contract, and select the court that will have jurisdiction over disputes. The country is also a signatory to the Hague Convention of 15 June 1955 on the law applicable to international sales of goods, which stipulates that contracts shall be governed by the law chosen by the parties, the general spirit of the agreement and the circumstances of the case.

It is essential that the agreement be characterized by an international connection (for example, one party has elected domicile in another country or the place of execution is located abroad), and that a jurisdiction clause is specifically drafted for this purpose.

Enforcing foreign awards

Although using foreign forums in order to obtain enforceable decisions against domestic debtors is rather unusual, foreign decisions issued against assets located in the country may be

Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.



enforced in the Netherlands provided that certain conditions are observed. On one hand, decisions rendered in an EU country would benefit from particularly advantageous enforcement conditions. Apart from EU Payment Orders which are normally enforceable directly in domestic courts, the two main methods of enforcing an EU judgment in the Netherlands are by the use of a European Enforcement Order (EEO, as provided under Regulation EC No. 805/2004) when the claim is undisputed, or by registering the judgment under the provisions of the Brussels I Regulation (44/2001). If the judgment qualifies as an uncontested claim, it can be enforced directly (i.e. without registration) by use of an EEO provided that the debtor has identified assets in the country. A European Small Claims Procedure (as provided by Regulation EC 861/2007) aiming at eliminating intermediate steps may similarly be relied upon while enforcing decisions up to EUR 2,000. If the claim is disputed, the procedure for registering an EU judgment with domestic courts is relatively simple. The judgment holder must apply to the relevant court for the judgment to be registered and provide the court with, among other documents, an authenticated copy of the judgment, a certified translation and, if interest is claimed, a statement confirming the amount and rate of interest at the date of the application and going forward. Once the judgment has been registered, it can be enforced as if it were issued by domestic courts (according to the Recast Regulation EC 1215/2012, such an exequatur procedure is no longer required from January 2015). On the other hand, judgments rendered in foreign countries outside

the EU would normally be recognized and enforced on a reciprocity basis provided that the issuing country is a party to a bilateral or multilateral agreement with the Netherlands drafted for this purpose. In the absence of reciprocal arrangements, exequatur proceedings would take place before domestic courts. As a general rule, foreign judgments would not be reviewed on the merits of the case, but the District Courts would deny admissibility where the foreign decision is neither final nor enforceable in the issuing country, deemed incompatible with domestic public policy or with decisions rendered by domestic courts, if the defendant has not benefited from a due process of law, etc.

The Netherlands is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, therefore its domestic courts ought to recognize and enforce awards rendered through international arbitration proceedings.

Litigation @ Euler Hermes

Should legal action be necessary, Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

Handling insolvent debtors

The court process in the Netherlands differs significantly from the other mechanisms considered here, though it is clearly in favor of the creditor. The Dutch Bankruptcy Act 1893 (Faillissementswet) treats insolvency through different procedures, though liquidation tends to prevail.

Insolvency proceedings

Out-of-Court proceedings

Practitioners seem unanimous in suggesting that in practice, due to limited efficiency, suspension of payment proceedings tends to take place informally through out-of-court negotiations before transforming into liquidation proceedings.

Restructuring the debt

The term debt restructuring/rescheduling under insolvency law in the Netherlands traditionally applies restrictively to private individuals. Therefore, corporate debt restructuring rather takes place through the suspension of payments (surseance van betaling) procedure during which the court appoints a Supervisory Judge and an administrator in charge of managing the company while the directors attempt to reach a compromise with the creditors. A plan would be approved, provided that it is accepted by two-thirds of the creditors representing three-quarters of the debt. There are no legal limits to the amounts to be written off.

During debt restructuring (for private persons), suspension of payments or bankruptcy proceedings, a moratorium is put into place from the moment the court has issued an adjudication order until the termination of the insolvency. That is, the creditors cannot enforce payment of their claims unless they hold exclusive rights (RoT, mortgage, right of distraint).

There is no legislation towards pools of creditors, although these exist on a voluntary basis, especially when a large corporation goes bankrupt. In reorganization and liquidation proceedings alike, a pool of creditors is mainly founded by credit insurance companies and the largest creditors, with the aim of accumulating a maximum of representative claims.

Winding up proceedings

Bankruptcy proceedings would commence when the debtor has ceased to pay and the District Court declares them bankrupt. A bankruptcy, if requested by a creditor, will only be declared if there are at least two creditors with overdue claims. If a bankruptcy is declared at the debtor's own request, however, there is no need for the second creditor.

The court then appoints one or more trustees (curators) in charge of the administration of the debtor's company. The trustee(s) would then call for the parties' claims and establish a list of creditors. The debtor's assets would then be auctioned and the proceeds would be distributed to the creditors, taking their priority ranking into account.

Managing directors have no obligation to file for bankruptcy or suspension of payments when significant difficulties appear; creditors owed large debts in excess of EUR 100,000 and doubting their debtor's capacity for payment would tend to request a fast-track judgment allowing seizure of the debtor's assets.

Priority rules

Priority rules normally apply while distributing proceeds to the creditors. Claims related to the insolvency proceedings would be repaid first, and thus have priority over preferential claims (tax and social security claims, pledge and RoT related claims) and unsecured normal claims.

In practice, RoT holders would be able to repossess their goods but the chances of receiving dividends from insolvency proceedings are rather low for unsecured creditors and the vast majority of bankruptcies are terminated without any payment of dividends to unsecured creditors.

Cancellation of suspect transactions (clawback)

Liquidation trustees are normally entitled to request the court to cancel certain transactions concluded prior to the insolvency proceedings. In particular, any measure taken by the debtor deemed detrimental to the creditors would typically be void. A suspect period of one year may apply. When the suspension of payments proceedings fail and transform into liquidation proceedings, the suspect period starts from the date of the first proceedings.

How long could insolvency proceedings take?

Insolvency proceedings tend to last from two to five years on average.

Necessary documents

Copy of the outstanding invoices, recent statement of account.



Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.

This Collection Profile is published by Euler Hermes, a company of Allianz, for information purposes only. The information provided therein shall not be regarded as providing any legal advice or advice of any kind. Readers should make their own independent evaluation of this information and under no circumstances shall any action be undertaken solely relying on it, while legal advice should be sought with legal practitioners at all times. While this information has been collected and drafted by recognized experts in their field and it is believed to be correct and reliable, Euler Hermes makes no warranty (express or implied) of any kind, in regards to the accuracy or completeness of this information, nor does it accept any responsibility or liability for any loss or damage arising in any way from any use made of, or reliance placed on, this information. This material should not be reproduced or disclosed without our consent. It is not intended for distribution in any jurisdiction in which this would be prohibited and Collection Profiles are subject to change without notice.

©Copyright 2017 Euler Hermes. All rights reserved.

Euler Hermes, a company of Allianz, leader in credit insurance solutions helping companies grow their business safely at home and abroad, provides global commercial debt collection services with true end-to-end capability. Euler Hermes offers both domestic and international trade debt collection services worldwide. Through our network, we use our experience and knowledge of local markets to ensure a professional service for our clients from pre-legal action through to legal proceedings.

Visit Euler Hermes at www.eulerhermes.com