

# Recovery of Trade Debts (the Netherlands)

by *Jan Holthuis*, *Paul A. Josephus Jitta*, and *Silvan Boonstra*, Buren N.V.

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A Practice Note providing Dutch-specific information on the legal options available to a business creditor looking to recover a trade debt in a business-to-business context, including ordinary legal proceedings, special fast-track procedures (if any), insolvency proceedings, and amicable settlement opportunities.

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Most businesses will likely pursue an unpaid invoice at some time, regardless of the sector in which they operate.

The process of recovering trade debts can often be tricky when it involves ongoing commercial relationships. Customers are also sometimes reluctant to deal with businesses that are known for approaching debt recovery aggressively, so pursuing a debt may result in the creditor losing goodwill in the market. However, businesses cannot afford to let their long overdue debts accumulate and eventually turn into bad debts, so quick and assertive action is often required. Understanding the pros and cons of the options available to parties is a crucial part of effectively managing and maintaining a healthy business.

This Note is a quick guide discussing the recovery of a trade debt in a business-to-business context in the Netherlands. It considers the options available to a business creditor seeking payment for goods or services that it has supplied from its customer who refuses to pay despite being legally bound to do so.

It also examines the main options available to a business creditor trying to recover a trade debt in the Netherlands from a business debtor, including ordinary legal proceedings, special fast-track procedures (if any), insolvency proceedings, and amicable settlement opportunities. For a high-level overview of how to recover an outstanding trade debt and the key considerations that may arise across several jurisdictions, see [Practice Note, Recovery of Trade Debts: Overview \(Cross-Border\)](#).

## Recovery of Trade Debts

### Main Options

The main options open to a creditor looking to recover a trade debt (in a business-to-business context) are to:

- Send a payment reminder.
- Send a formal letter or reminder.
- Charge collection costs and legal interest.
- Set up a payment settlement.
- Use a collection agency.
- Start a court proceeding.

### Alternative to Legal Options

First, making good agreements with the debtor in advance is important to avoid formal steps in other forums. This also applies to finding out information from the debtor, such as whether the debtor already has financial problems.

If the debtor cannot pay an invoice, a creditor should make payment arrangements before taking formal steps. The creditor can call the debtor or seek an in-person meeting. If this does not provide a solution because the debtor does not want to pay the invoice, the creditor may choose to send official letters (for example, by a lawyer) to the debtor with a reminder, before taking formal steps.

### Whether the Type of Remedy Varies Depending on the Value of the Debt

In principle, in the Netherlands, the amount of the claim does not determine what legal options are available. However, for example, the cost of attachment may exceed the cost of the claim, which is a consideration for the creditor in determining whether to pursue the debt

The amount of the claim also affects the court to which the creditor turns (see [Competent Court](#)).

### Pre-Action Conduct

#### Letter Before Claim

After an invoice has expired and the debtor fails to pay, the creditor must send a written payment reminder before commencing proceedings. The payment letter must include a payment term, with a minimum of five to seven days in case of a business-to-business invoice (Article 6:82, *Dutch Civil Code 1992 (Burgerlijk Wetboek)*). The best practice is for the letter to also include:

- The invoice number.
- The date of the payment reminder (or reminders).
- The invoice amount.
- A statement that collection costs and the cost of legal proceedings will be borne by the debtor.

The reminder can be sent by registered mail, registered letter, regular mail, or regular letter. However, it is important for the creditor to be able to prove that the letter reached the debtor.

## Penalties for Non-Compliance

The only penalty that the court can impose if the creditor does not send a valid payment reminder is that the creditor cannot initiate legal proceedings. If the reminder does not meet the legal requirements (see *Letter Before Claim*), the creditor must send a new, valid reminder. If the creditor has not sent a valid reminder has not been sent and the payment period has not passed, the creditor cannot charge collection fees.

## Evaluation of Debtor's Financial Position

A creditor can verify a debtor's financial strength by requesting the debtor's financial statements at the *Dutch Chamber of Commerce*. The creditor can also use the *insolvency register* to check whether a company is still active.

## Limitation Period

Dutch law provides limitation periods after which a creditor can no longer seek performance of his claim.

If the law does not state a specific limitation period, the general rule is that a claim lapses 20 years after the claim arose or became due and payable. However, Dutch law provides a specific shorter limitation period for many types of claims, so most claims expire at an earlier point in time.

Most exceptions to the main rule are subject to a five-year limitation period. This five-year limitation period applies to the following claims, among others:

- A claim for performance of an agreement to give or do something, for example performance of a money loan agreement. The period starts from the moment the claim is due and payable.
- A claim for periodic payment, for example payment of interest or wages. The limitation period starts from the moment the claim is due and payable.

- A claim for undue payment, which means where a person who has given money or goods without being reimbursed can reclaim it from the recipient. The limitation period starts to run on the day after the day the injured party is actually able to bring a legal claim for reimbursement.
- A claim for damages or a stipulated fine. The five-year period starts from the day after both the damage and the offender are known, with a maximum period of 20 years after the damage event. Longer periods apply to damages resulting from certain crimes.
- An action to rescind a contract on the grounds of default or to remedy a default. The five-year period starts from the moment the creditor became aware of the default, but in all cases the claim lapses 20 years after the default occurred.

## Extension of Limitation Period

The limitation period can be extended by an **act of interruption**. If an act of interruption interrupts the limitation period, the limitation period starts running again when the act of interruption ends.

A written or registered mail from the creditor to the debtor constitutes an act of interruption.. The moment that the registered mail reaches the debtor, a new limitation period starts, which may last from 5 to 20 years depending on the claim (see [Limitation Period](#)). The creditor should retain this writing or registered mail as evidence for the court. To be valid, the act of interruption should also show that the creditor unequivocally reserves the right to pursue the claim against the debtor.

## Competent Court

Judicial collection proceedings are submitted to the subdistrict or civil courts. The subdistrict court handles cases up to and including EUR25,000 and all rent cases, regardless of the amount of the claim. The civil court handles claims over EUR25,000 or of undetermined value.

## Specialist Courts

There are no special courts for trade debt recovery in the Netherlands.

## Court Proceedings

### Starting Court Proceedings

After sending a reminder with a minimum deadline of five to seven days, a creditor should send the claim to a lawyer to start proceedings. The lawyer then writes a writ of summons and, if so desired, conducts a seizure to get the claim paid by the debtor. A claimant can conduct a seizure up to 14 days before the summons is filed, but conducting a seizure is not required.

### Court Fees

Both the claimant and defendant must pay court fees. The amount that must be paid depends on several factors, such as the type of case, the claim value, and the party's income.

In civil disputes, the parties generally incur the following costs:

- A court fee of EUR676 in disputes with a claim of indeterminate value. This is the case, for example, for an attachment or a claim demanding that the other party must perform a legal act or must refrain from the same.
- A court fee of EUR2,837 in disputes with a claim or request with a value not exceeding EUR100,000.
- A court fee of EUR5,737 in disputes with a claim or request with a value of at least EUR100,000 but not exceeding EUR100,000.
- A court fee of EUR8,519 in disputes with a claim or request with a value of at least EUR1,000,000.

These amounts are subject to increases over time for inflation purposes.

## Service

In the Netherlands, the bailiff serves the summons. After the lawyer drafts the summons, it is sent to a bailiff from the register of the [KBvG](#), the association of bailiffs, who personally serves it on the defendant.

There are no procedural requirements to serve a summons, only that the court must be notified and that the summons be sent to the court before the cause list date. The summons in civil proceedings must be served by a bailiff no later than one week before the first cause list date. The cause list date is mentioned in the summons and is the day by which the defendant must have reported in writing to the court.

The most common method of service is sending the summons to the defendant's residence or registered office.

Under Article 111 of the [Dutch Code of Civil Procedure](#) (*Rechtsvordering*), there are several requirements for the summons. For example, the summons must indicate:

- The claimant's chosen domicile in the Netherlands.
- The address details of the agents and lawyers.
- The claim and its grounds.
- The date of the trial.
- The designation of the court to hear the dispute.

If any of these requirements is not met, the court may annul the summons. However, when the requirements are not met, the claimant can fix the defects by a recovery writ.

When the claimant fails to properly serve the claim and no recovery writ is issued, the summons is null and void.

## Defence

The defendant must respond to the summons within the deadline mentioned in the writ of summons. The deadline for an initial response is at least one week after the service of the summons, but usually the deadline is several weeks. Before the deadline, the defendant should either:

- Respond to the summons.
- Notify the court, usually via a lawyer, that they are raising a defence. In these cases, the court grants the defendant up to six weeks to respond to the summons.

The defendant can also request an extension of time. If the defendant does not meet the deadline, the judge can issue a default judgment, though a default judgment can be purged if necessary.

If the defendant agrees with the summons, the defendant can respond by letter that they admit the claim. If the defendant disputes the debt, the defendant's lawyer must file a writ of defence, setting out the grounds on which the court should reject the claimant's claims. The defendant can also file a counterclaim in the writ of defence if the defendant has a claim against the claimant.

If the defendant does not respond, the judge issues a default judgment. However, the defendant can still purge the default judgment by summoning the claimant to the same court, using what is called an opposition summons instead of a defence. The deadline to purge the default judgment is four weeks after either:

- The default judgement was served on the defendant.
- The defendant performed an act evidencing knowledge of the existence of the default judgment.

In the opposition summons, the defendant includes their objections, and the proceedings are called opposition proceedings. After this, the judge still hears the substance of the case.

## Later Stages

After the defendant files the writ of defence, the court rules on the further course of the case. The judge has the following options:

- The judge gives the parties the opportunity to respond to each other in writing again (that is, a second round of filings).
- The judge issues an interlocutory judgment asking for additional evidence.
- The judge invites the parties to a hearing.
- The judge issues a final judgment.

Usually, the judge invites the parties to a hearing after the writ of summons and the writ of defence have been filed.

## Summary Proceedings and Lower Value Claims

There are no special procedures in the Netherlands to deal with, for example, low-value claims or claims in which the debtor has no real defence. These claims must follow the usual process.

## Interim Measures

In the Netherlands, evidence and the debtor's assets can be attached in provisional or interim measures. These proceedings seize the evidence or assets until the court issues a final judgment.

### Grounds

If the claimant has a claim against the debtor, the claimant can seek attachment to secure the claim. The claimant must then file the writ of summons within 14 days. The court can grant provisional seizure if both:

- The court has no doubts about the merits of the claim or the need for the requested seizure.
- The court has justified fear that, between the summons and the decision, the debtor will hide the seized object from the view of the seizing creditor.

Provisional attachment is governed by Article 700 of the Code of Civil Procedure.

If a claimant wishes to use a particular piece of written evidence not in their possession, they can file a claim to access and secure the documents. This claim can be instituted both in ongoing proceedings (by raising an **incident**) and before proceedings (by way of interim relief). An incident is a type of cross-claim brought within the proceedings. An incident can be a procedural technical claim, for example on the basis that the court has no jurisdiction, that there is already another case pending at another court about the same subject matter (*litis pendentia*), or that the claimant should issue security to be able to pay the costs of the proceedings at a later stage. This claim is governed by Article 843a of the Code of Civil Procedure.

## Final Remedies

If the court finds that the claimant's claim is well-founded, the claimant has an enforceable judgment that can be used to seek attachment of the debtor's assets. A bailiff can also be sent with the judgment to enforce the claim. The court can also impose periodic penalty payments and order the losing party to pay the litigation costs incurred by the other party. This includes, for example, the costs of the winning party's lawyer and their court fee. The judge determines these costs.

## Late Payment Interest

The Netherlands has statutory commercial interest and normal statutory interest. In principle, the statutory commercial interest rate of 10.5% applies if there is a contract between commercial parties. For non-commercial transactions, the interest rate is



4%. Interest is calculated from the time the claim became due and payable. Parties can also agree on an interest amount in an agreement instead from the statutory commercial interest rate.

## Legal Fees and Costs

The court may order the losing party to pay the litigation costs incurred by the other party. This includes, for example, the costs of the winning party's lawyer and their court fee. The court determines the award of litigation costs based on a graduated scale (see *de Rechtspraak: Liquidatietarief* (Dutch Judiciary: Liquidation Rate)). Therefore, only a part of the winning party's costs will be reimbursed.

Follow-up costs and attachment costs, including the court fee, can also be eligible for reimbursement. The judge determines the amount.

## Unsuccessful Party Liability for Costs.

The successful party can recover legal costs from the unsuccessful party in litigation but is subject to the statutory scale (see *Legal Fees and Costs*).

## Court's Discretion on Costs

The parties can conclude an out-of-court agreement on the division of litigation costs. For example, they can agree that both parties will bear their own legal costs. In principle, the court takes the parties' agreement into account but is not required to observe the parties' agreement. If the court itself awards the legal costs, the parties can settle this with each other afterwards.

## Recovery of Legal Costs in Cases Settled Without Court Action

The parties are not entitled to recovery of legal costs if they settle the dispute before legal proceedings are initiated. The parties can mutually agree which party will bear specific costs.

## Costs-Only Proceedings

To determine an award of costs, the judge looks at all the circumstances of the case and is not bound by any specific rules. Among others, the judge considers the party's financial situation.

## Recovery of Legal Costs After Court Proceedings Have Commenced

If parties did not agree on costs, the judge decides whether the losing party must pay the costs of the winning party. The amount is based on the circumstances and is subject to the statutory scale.

## Recovery of Legal Costs Where Court Proceedings Are Settled During Trial

In principle, if the case is resolved by trial without an agreement on costs, the losing party must reimburse the winning party's legal costs. The court calculates the costs based on the statutory scale.

## Enforcement of Judgments

Usually, judgments in the Netherlands are provisionally enforceable, meaning that the winning party can enforce the judgment immediately, even if an appeal is lodged or the main proceedings are ongoing. There is no special process for provisional enforcement in the Netherlands. Rather, a party claims provisional enforcement in the writ of summons, and the court grants or denies the claim. A judge can decide that a judgment should not be provisionally enforceable if it is clear that the defendant will appeal. The judge will give express reasons for this decision.

If the judgment is not provisionally enforceable, parties must wait and see whether the other party will appeal. This can take up to three months and may take even longer if an appeal is lodged and the judgment is not provisionally enforceable.

## Payment in Installments

If the defendant wants to pay in installments, the defendant must submit a request to do so. This request is made after the court has ruled in a judgment that the defendant must pay an amount to the claimant.

The payment arrangement states when the defendant is considered in default.

## Procedure for Enforcement

In the court order, the judge records the judgment. This gives the creditors the right to take necessary coercive measures to enforce the court's ruling. The bailiff often gives the debtor one last opportunity to pay within two days. After the expiration of this term, the bailiff can levy an execution against the debtor's property.

## Time Limit

The power to enforce a judgment ends after 20 years. However, as with the right to pursue a legal action, the limitation period can be interrupted so that a new limitation period begins to run (see [Extension of Limitation Period](#)).

Generally, debt recovery claims are provisionally enforceable.

## Time Taken to Determine and Enforce a Debt Recovery Claim

Local courts usually take two to four weeks after the hearing to determine debt recovery claims. Usually, judgments in the Netherlands are provisionally enforceable and can be enforced immediately.

## Appeals

If the judge issued a default judgment because the defendant did not respond in the proceedings, the defendant can appeal this judgment at the same court that issued the default judgment. The defendant must summon the claimant to the same court within four weeks. The judge then handles the substance of the case.

If either party disagrees with the judge's ruling, they both can appeal. Appeals are filed by a party's attorney. The case is submitted to the Court of Appeal for a new hearing. Parties can appeal up to three months after the ruling.

If one of the parties disagrees with the ruling of the Court of Appeal, the party can appeal to the [Supreme Court](#) in cassation within three months of the ruling. A cassation appeal is a request to the Supreme Court to overturn a previous court ruling. This also requires an attorney.

In the Netherlands appeals are of right, and parties do not need permission to appeal. In some civil cases, no appeal is possible, for example if the case involves less than EUR1,750.

## Grounds for Appeal

Either party can appeal on the ground that they disagree in whole or part with an order or judgment of the court.

## Time Limit for Filing Appeal

The time-limit for appealing is:

- For a default judgment, four weeks after either:
  - the ruling was served on the defendant in person; or
  - after the defendant has performed an act evidencing that they have knowledge of the existence of the default judgment.
- For a court ruling, three months after the ruling.
- For the judgment of the court of appeal, three months after the ruling.

## Insolvency Proceedings

### Effectiveness of Insolvency Proceedings

Creditors can file for bankruptcy on behalf of the debtor if:

- The debtor has two or more debts, one of which is due (meaning that the payment period is over).

- The debtor has two or more creditors.
- The debtor has stopped paying.

The creditor's attorney files for bankruptcy with the court. At the hearing, the judge decides whether the debtor is bankrupt.

In the Netherlands, insolvency proceedings are generally a tool of last resort for creditors. In most civil proceedings, creditors are unlikely to consider filing for the debtor's bankruptcy because doing so reduces the risk that the claim will be satisfied.

## Disadvantages of Issuing Insolvency Proceedings Against Debtors

The disadvantages in issuing insolvency proceedings against a debtor are:

- The creditor's attorney must file a bankruptcy petition, and there are costs associated with this. If the court finds that the debtor is bankrupt, the creditor can file for reimbursement for the expenses incurred in the bankruptcy.
- The creditor must pay court fees.
- If the court finds that the bankruptcy petition was filed wrongfully, the bankruptcy is not awarded, which in turn may lead to the creditor being liable for the court costs and the damages suffered by the debtor.

## Insolvency Proceedings and Disputed Debts

A creditor can begin insolvency proceedings based on a genuinely disputed debt. The creditor is only liable for damages the debtors suffers because of a wrongful bankruptcy filing if the creditor either:

- Knew or should have known that there were no grounds for declaring bankruptcy.
- Has otherwise misused authority with the application.

On appeal, a bankruptcy order against a debtor can be annulled if it is found to be unlawful (for example, because the creditor's claim was unjustified).

## Insolvent Debtors

A debtor is deemed insolvent in the Netherlands when they can no longer meet financial obligations. For information on when creditors can file for bankruptcy for a debtor, see [Effectiveness of Insolvency Proceedings](#).

## Insolvency Law

In the Netherlands the primary legislation on insolvency is the [Dutch Bankruptcy Act \(Faillissementswet\)](#).

For cross-border insolvency, [Council Regulation \(EC\) No 1346/2000 on Insolvency proceedings](#) may apply.

## Insolvency Proceedings Involving Foreign Companies

According to a judgment of the Court of Appeal of The Hague, a foreign company that operated predominantly in the Netherlands that was subsequently dissolved under foreign law and ceased to exist can be subject to insolvency proceedings in the Netherlands (*Court of Appeal of the Hague, 12 June 2018, 200.239.090/01 (Taxi The Hague Ltd.) (ECLI:NL:GHDHA:2018:1447)*).

## Debt Collection Agencies

If a customer fails to pay an outstanding invoice, a creditor can hire a collection agency, bailiff, or collection lawyer. These third parties can collect invoices on behalf of the creditor as follows:

- A collection agency sends letters requesting payment but cannot enforce payment.
- A bailiff can initiate legal proceedings. The bailiff can also use coercive measures, such as seizure and sale of the debtor's goods. To do this, however, the bailiff must first get a court order.
- A collection lawyer can send reminders, draft a summons, and file for a debtor's bankruptcy.

## Steps to Reduce Legal Costs When Recovering Debts

The only step that a creditor can take to ensure that the legal costs incurred will not outweigh the amount of the debt is to agree to hourly rates with the lawyer or other representatives before the proceedings.

## Alternative Dispute Resolution to Recover Trade Debts

Generally, alternative dispute resolution (ADR) methods are almost not used in commercial disputes in the Netherlands, including in cases to recover trade debts.

Over the past thirty years, interest in ADR as a form of conflict resolution has emerged in the Netherlands. ADR has taken root in all areas of law and is increasingly being used in the Netherlands. However, this mainly applies to disputes involving personal relationships, such as conflicts in the areas of family law and labour law. In the case of commercial disputes, ADR is used on a much smaller scale. According to figures from the [Mediators Federation of the Netherlands \(Mediatorsfederatie Nederland\)](#), the representative organisation for mediation in the Netherlands, 4.5% of all mediations are commercial disputes.

Parties can consider ADR in insolvency proceedings to prevent a party from going bankrupt. However, ADR is not mandatory and cannot be imposed by the court because ADR in the Netherlands is exclusively on the parties' own initiative.