



# Extrajudicial & judicial debt collection

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# Introduction

Belgian companies are regularly confronted with outstanding invoices and defaulting debtors who are often located abroad. In our neighboring countries, there are various strategic extra judicial and judicial solutions available to organizations that wish to recover these debts. In addition, numerous provisional and protective measures can be taken.

KPMG Law has the experience and expertise to guide your organization through the various procedures and can assist you along your debt collection process(es).

## Objective

This practical checklist is intended to provide you with an overview of the most common actions that can be taken in relation to debt collection in Belgium and the neighboring countries.

## Target audience

This overview is intended for large businesses, as well as small and medium-sized enterprises (SMEs), that operate internationally and are confronted with defaulting debtors.

## How to use

Simply choose which (legal) remedy you want to use and discover which law or legal basis applies, including the pros and cons of each solution.

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# 1. General

As a creditor, you should first check which law is applicable and which courts are competent in the event of non-payment of debts.

Depending on the applicable law, there might be several extrajudicial actions or certain provisional and protective measures available to you. Ultimately, you might need to resort to judicial measures whereby (in some cases) a writ of execution can be obtained in a relatively short period of time.



## 2. Extrajudicial

	Options	Conditions	Procedure	Timing	Advantages / Disadvantages
BELGIUM	<p><b>IOS-procedure</b></p> <p>(Recovery undisputed debt - proceedings)</p>	<p><b>(a)</b> Belgian debtor (creditor: Belgium, Netherlands, Germany, Luxembourg, Spain, Italy, Austria)</p> <p><b>(b)</b> B2B</p> <p><b>(c)</b> undisputed, due and payable debt</p>	Written petition formulated by lawyer further procedure via bailiff	Ca. 5 - 6 weeks	<p><b>(+)</b> Low cost</p> <p><b>(-)</b> when disputed by debtor (within 30 days), the creditor still needs to go to court</p>
THE NETHERLANDS	<p>There are no formal extrajudicial debt collection procedures in the Netherlands. Common practice for debt collection involves filing for bankruptcy of the debtor aimed at reaching a payment settlement.</p>	<p><b>(a)</b> cessation of payment;</p> <p><b>(b)</b> at least two creditors.</p>	Petition written up by a lawyer.	Ca. 1 week	<p><b>(+)</b> forcefull measure to acquire payment</p> <p><b>(-)</b> chance that company will be declared bankrupt leading to situation that claim will be considered unsecured.</p>
GERMANY	<p><b>Legal request for payment</b></p>	<p><b>(a)</b> German debtor</p> <p><b>(b)</b> due and enforceable claim</p>	Formal notice formulated by German lawyer	Ca. 2-4 weeks	<p><b>(+)</b> Low cost</p> <p><b>(-)</b> when disputed by debtor, the creditor still needs to initiate legal proceedings</p>



## Options

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## Timing

## Advantages / Disadvantages

### Amicable (or mediation) procedure

The aim is to re-establish the link between the creditor and the debtor in order to obtain payment of the claim.

The claim must be certain, liquid (i.e. cashable), due and payable.

### For the amicable procedure

Three remedies (costs to be borne by the creditor) : (i) an appointed debt collection company (activity regulated by Articles L. 124-1 and R. 124-1 to R. 124-7 of the French Code of civil enforcement procedures); (ii) a lawyer (acting as mediator); or (iii) a bailiff. The handing over of documents to the bailiff is equivalent to a mandate to collect the debt.

Depends on the common will of the parties to reach an agreement. In general, this step does not extend beyond a few weeks.

**(+)** Faster and often cheaper than a formal court action.

### Non-contentious procedure

If mediation fails, strengthening the action to make the debtor pay his debt, with the threat of the judge's intervention

### For small claims (<4000€) from contractual or statutory sources

Simplified procedure by the bailiff at the request of the creditor.

The claim must be certain, liquid (i.e. cashable), due and payable.

### For the non-contentious procedure

The main actions are the reminder letter (addressed by the bailiff), and the formal notice (last amicable stage of the debt collection), often sent by the lawyer.

### For small claims (<4000€) from contractual or statutory sources

Gives a mandate to the bailiff to invite the debtor to negotiate the debt amount and terms of payment. The bailiff who has received the agreement of the creditor and the debtor issues, without further formality, an enforceable title.

Depends on the common will of the parties to reach an agreement. In general, this step does not extend beyond a few weeks.

**(+)** Faster and often cheaper than a formal court action.

Options

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**Pre Litigation  
Correspondence/ADR**

An outstanding debt

Written demand letters - confirming next step legal proceedings (Default Notice Letter)  
Alternative dispute resolution (ADR):  
— mediation, where an independent third party helps the disputing parties to come to a mutually acceptable outcome.  
— arbitration, where an independent third party considers the facts and takes a decision that can be binding on one or both parties.

Depends on the method used/ what the parties agree to.

**(+)** A faster, easier way to settle disputes without Court intervention  
**(-)** Not always as effective and disputed court intervention may still be required.





## Options

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## Advantages / Disadvantages

### Statutory Demand

- (a)** The debt must be more than £750, and not be in dispute.
- (b)** The creditor must be able to prove the demand has been served correctly.
- (c)** The creditor must not have security over assets to the value of, or exceeding, the debt.
- (d)** The money due must not already be part of a payment arrangement.
- (e)** The creditor must not owe the debtor any money.
- (f)** Cannot not be used for debts over 6 years old.

- A statutory demand should:
- Comply with the requirements of rule 7.3 or rule 10.1 of the (as the case may be), and the provisions of general application in Chapter 3 of Part 1 of the Insolvency (England and Wales) Rules 2016.
  - Correctly identify the creditor and the debtor.
  - Provide details of the debt, any consideration for it and how it arose.
  - Include details of any interest or other charges that are accruing. Be signed and dated by the creditor or someone authorised to make the demand on the creditor's behalf (rules 6.1 and 4.4(3), IR 1986).
  - Served personally on the debtor where possible.

It is important for the creditor to have proof that the statutory demand was properly served on the debtor if it intends to rely on non-payment of the demand as evidence of the debtor's insolvency when it presents a petition (see below)

The payment by the debtor must be made within 21 days of the date of service. If the debtor disputes the statutory demand, it must seek an injunction against the creditor within 18 days to prevent a winding up petition being issued.

- (+)** A Statutory Demand is a relatively quick and inexpensive way of exerting pressure on a debtor, when compared to instigating Court action. There is no involvement from the Court and no issue fee to be paid. There is no requirement to follow up on the demand even if payment is not made, subject to a potential application to set aside or injunction application (see below).
- (+)** This may be beneficially if it is commercially unviable to pursue a debt. The threat of bankruptcy/winding up petition can be very persuasive as if such action is taken it is likely to impact on funding and credit ratings for the debtor.
- (-)** A Statutory Demand cannot be used if the amount owed is not a specific sum, such as a damages claim.
- (-)** If a Statutory Demand is ignored, the next steps are issuing of a bankruptcy or winding up petition which can be a costly process.
- (-)** Although no minimum debt for a Statutory Demand, the minimum sum for a Bankruptcy Petition is £5,000.00 and a Winding Up Petition is £750.00. If the debt does not exceed these sums, other follow on recovery methods will have to be utilised.
- (-)** If a debt is disputed on genuine grounds, a debtor will be entitled to apply to set aside the Statutory Demand (for an individual) or make an application for an injunction restraining presentation of a winding up petition (for a business). If such an application is successful, there are likely to be cost consequences for the creditor.
- (-)** Even if the debtor is made bankrupt or is wound up, there is no guarantee that the debt will be recovered in full or at all.



# 3. Judicial

	Options	Conditions	Procedure	Timing	Advantages / Disadvantages
BELGIUM	Summary proceedings before court (art. 735 Ger. W.)	Undisputed, due and payable debt	Service of summons by bailiff → “summary proceedings”	ca. 3 - 5 weeks	<b>(+)</b> Enforceable judgment in ca. 2-4 weeks after case has been taken into consideration by judge <b>(-)</b> could take up to 3 months if disputed
	Common Judicial proceedings	Due and enforceable claim	Service of summons by bailiff	ca. 4 - 10 months	<b>(+)</b> Enforceable title <b>(-)</b> duration, cost, uncertain
THE NETHERLANDS	Conviction by the subdistrict judge for claims up to EUR 25.000	Undisputed, due and payable debt	Service of summons by bailiff	by default: ca. 6 weeks/ when disputed: 3-6 months	<b>(+)</b> enforceable judgment in a short period of time <b>(-)</b> could take up to 3-6 months if disputed <b>(-)</b> suitable only for substantial claims considering the court costs and attorney costs ( <a href="https://www.rechtspraak.nl/Naar-de-rechter/Kosten-rechtszaak/Griffierecht">https://www.rechtspraak.nl/Naar-de-rechter/Kosten-rechtszaak/Griffierecht</a> )
	Conviction by the civil court for claims over EUR 25.000	Undisputed, due and payable debt	Service of summons by bailiff	by default: ca. 6 weeks/ when disputed: 3-6 months	
GERMANY	Summary proceedings for a payment order	<b>(a)</b> German debtor <b>(b)</b> undisputed, due and enforceable claim	Petition for payment order → automatic processing → payment order → writ of execution upon separate petition	ca. 3 - 5 weeks	<b>(+)</b> Low cost; enforceable title in ca. 3-5 weeks after submitting a petition for payment order; automatic processing (no decision by judge) <b>(-)</b> a lawsuit has to be filed if disputed
	Common judicial proceedings	<b>(a)</b> German debtor <b>(b)</b> due and enforceable claim	Filing a lawsuit with the competent court → preliminary proceedings → hearing → taking of evidence (if facts are disputed) → judgement	ca. 4-10 months	<b>(+)</b> Enforceable title <b>(-)</b> high costs; duration; litigation risks if taking of evidence is necessary; in the most cases the creditor has to provide security before initiating an enforcement against the debtor

Options	Conditions	Procedure	Timing	Advantages / Disadvantages
Injunction against the debtor ("injonction de payer") (art. 1405 et seq. of the French Code of civil procedure).	The debt has a contractual origin or has resulted from an obligation of a statutory nature, and is of a defined amount.	Action is brought by way of a petition handed over or sent by the creditor to the clerk's office → Non-contradictory procedure → but possibility for the debtor to lodge a statement of opposition (in this case, if the debtor disputes the debt after the bailiff's notification, a common procedure starts).	ca. 1 - 6 weeks	<p><b>(+)</b> simple, quick, and inexpensive procedure that doesn't require a lawyer, unless the debtor disputes the debt after the bailiff's notification</p> <p><b>(-)</b> risk of petition being rejected by the judge if the request is considered incomplete (in such a case, the debtor is not informed of the existence of the procedure, which may be reinitiated with additional information), the claim too large, or a contradictory procedure necessary. No option with regards the competent jurisdiction (the debtor place one).</p>
Common judicial proceedings	The existence of a debt	Contradictory procedure / written exchanges between the parties and with the Court	ca. 6 weeks - 2 years	<p><b>(+)</b> allows for the payment of damages in addition to the debt amount at stake</p> <p><b>(-)</b> longer and more expensive, this procedure requires a lawyer.</p>



## Options

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## Advantages / Disadvantages

Ordinary civil proceedings.  
In England & Wales.

Debt proceedings fall within three categories

- Small claims: Claims smaller than £10,000.
- Fast track: Higher value, non-complex claims (usually up to £25,000).
- Multi track: Claims larger than £25,000, or particularly complex cases.

The claim can be made online if claiming for a fixed ('specified') amount of money. If the amount is unspecified, Form N1 must be completed or if preferred for a fixed amount and submitted with a court fee (which depends on the amount of the debt).

If the debtor denies the debt, there will be a court hearing.

The court will order payment if:

1. the debtor does not respond to the claim; or
2. the debtor admits that the debt is owed but does not pay.

Following an order, if the debt is still unpaid, applications can be made to the Court for further steps to collect the money e.g. instructing bailiffs.

The timeframes can vary as each case is considered on a case by case basis and is subject to how the debtor responds.

**(+)** The prospect of the debtor having to spend time and money defending the proceedings will act as an incentive to pay the debt or to put forward a compromise proposal.  
**(+)** Assets can be sold to pay the debt.  
**(+)** The prospect of a judgment debt affecting the debtor's credit rating will also act as an incentive to pay or settle.  
**(+)** The debtor's existence as a trading entity is not immediately threatened by this form of recovery action and indeed it will allow the debtor to continue trading in order to generate money to pay the debt.  
**(+)** A judgment or order requiring the debtor to pay the debt opens up a number of different enforcement options.  
**(-)** It can be slow, in particular if the claim is defended. A typical defended debt claim will take between 3 and 12 months to reach trial.  
**(-)** The procedure is more expensive.  
**(-)** The procedure is not confidential – once issued the claim will ordinarily be open for all to see (through the court's records). "

Winding-up petition

**(a)** The debtor must be a company.  
**(b)** The amount owed must be more than £750.  
**(c)** The debt must be more than 21 days overdue.  
 (NB: A similar process is followed for Limited Liability Partnerships.)

An application is made to the High Court to wind the company up together with a court fee which is currently £280 plus £1600 for managing the petition.

The winding up petition must be advertised at least seven days before the date of the winding up hearing, and seven days after the winding up petition has been served. This means the company effectively has 14 days to save itself.

**(+)** Brings commercial pressure upon the debtor to pay. No company will want a petition advertised in the London Gazette if it is able to pay its debts and wishes to continue trading.  
**(+)** Assets can be sold to pay the debts of the company.  
**(-)** Unsecured creditors have to share equally in any distribution of funds with all other unsecured creditors and only after secured creditors have been paid. There might be other creditors waiting in the wings who have had notice of the petition and who might step in should the petitioning creditor have been paid off. If so, and the petition is granted, any sums paid to the original petitioning creditor since the petition was issued, may have to be paid back. In practice, this means that once a petition is advertised, it is harder to reach a payment arrangement, as any arrangement effectively needs also to include any supporting creditor.



# 4. Provisional and protective measures

	Options	Conditions	Procedure	Timing	Advantages / Disadvantages
BELGIUM	Precautionary attachment ("Bewaerend beslag op roerende goederen")	(a) Claim of a fixed amount, due and payable (b) Urgency (debtor's solvency compromised)	Prior authorization court by unilateral application No authorization needed when claim is based on a judgement that constitutes a title)	Judgement ca. 8 - 14 days	(+) strong means to apply pressure on counterparty (better negotiating position), (+) short term, (-) Risk of appeal and even damages when unlawful, (-) Gives no preferential claim in case of bankruptcy
	Conservatory Garnishment ("Bewaerend beslag onder derden") for ex. on bank account	(a) Claim of a fixed amount, due and payable (b) Urgency (debtor's solvency compromised)	No prior judicial authorization necessary if the claim results from a contract or a notarial act (intervention by bailiff)  Prior authorization court by unilateral application	ca. 2-3 days  Judgement ca. 8 - 14 days	
	Attachment immovable property ("Bewaerend beslag op onroerende goederen")	(a) Claim of a fixed amount, due and payable (b) Urgency (debtor's solvency compromised) (c) Valid mortgage certificate	Prior authorization court by unilateral application	Judgement ca. 8 - 14 days	
THE NETHERLANDS	Precautionary attachment on debtor's movables	(a) reasonable fear of embezzlement, (b) the precautionary attachment must fulfil the requirements of proportionality and subsidiarity	(a) authorization by court acquired by means of a petition, (b) a procedure pertaining to the debt collection has to be lodged within a specified period ( usually 8-14 days)	Authorization within 24 hours	(+) fast (+) once judgement has been passed in the case pertaining to the debt collection, the precautionary attachment is automatically converted into a executorial attachment, (+) the attached cannot be transferred or encumbered by limited rights by the debtor, (-) risk of appeal, (-) risk of liability in case the attachment is considered unlawful, (-) gives no preferential claim in case of bankruptcy.
	Precautionary attachment on debtor's immovables	(a) reasonable fear of embezzlement, (b) the precautionary attachment must fulfil the requirements of proportionality and subsidiarity	(a) authorization by court acquired by means of a petition, (b) a procedure pertaining to the debt collection has to be lodged within a specified period ( usually 8-14 days)	Authorization within 24 hours	
	Third Party attachment	(a) specified amount for the attachment, (b) the precautionary attachment must fulfil the requirements of proportionality and subsidiarity	(a) authorization by court acquired by means of a petition, (b) a procedure pertaining to the debt collection has to be lodged within a specified period ( usually 8-14 days)	Authorization within 24 hours	

Options	Conditions	Procedure	Timing	Advantages / Disadvantages
Attachment movable property	<p><b>(a)</b> enforceable title</p> <p><b>(b)</b> enforceable execution copy of the title</p> <p><b>(c)</b> formal notification of the title</p>	Enforcement by bailiff upon petition by creditor	Ca. 2-3 weeks	<p><b>(+)</b> Instrument to apply pressure; satisfaction of the creditor; costs of compulsory enforcement shall be borne by debtor</p> <p><b>(-)</b> risk of appeal and even damages if enforcement unlawful; duration of the proceedings; legal possibilities to stop enforcement if the debtor is insolvent; no preferential rights in case of insolvency</p>
Attachment monetary claims	<p><b>(a)</b> enforceable title</p> <p><b>(b)</b> enforceable execution copy of the title</p> <p><b>(c)</b> formal notification of the title</p>	Transfer of monetary claim on the basis of court ruling upon petition by creditor	Ca. 4-5 weeks	
Attachment immovable property	<p><b>(a)</b> enforceable title</p> <p><b>(b)</b> enforceable execution copy of the title</p> <p><b>(c)</b> formal notification of the title</p>	Enforcement by entry of a debt-securing mortgage for the claim, by enforced auction, and by receivership on the basis of court ruling upon petition by creditor	Ca. 2-5 months	





## Options

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## Advantages / Disadvantages

Third Part Debt Order

A County Court Judgement needs to be in place and have been ignored.

- Court Form N349 must be completed and lodged with a Court fee of £110.00. Note – It may be essential to serve the Order on a particular date when you believe funds will be available. If that is the case, ensure you notify the Court that you wish to serve the Order yourself.
- The Court will issue an Interim Order with a hearing date.
- The Order must be served on the Third Party. Once served, a certificate of service must be filed with the Court.
- The Third Party will write to you disclosing the amount available/frozen. If it is a bank, they will also disclose any other bank accounts the debtor may have. Send this correspondence to the Court.
- Prepare for and attend the hearing listed at Court.
- Obtain the Final Order and serve on the third party (if not done so by the Court) and await for the funds to be sent to the creditor.

The debtor and the third-party have the option to object to the application for a third-party order and this must be done at least three days before the hearing. Timescales are approximately one week for Interim Order and 10 to 12 weeks for the Final Order.

- (+)** Relatively cheap and the Interim Order is obtained quickly.
- (-)** Can be a lottery as to the amount held in the bank when the order is received, as the debtor is unlikely to have a large sum sitting in its account.

## Options

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## Advantages / Disadvantages

### Attachment of Earnings

If the debtor is an individual who is employed and the name and address of his/her employer is available, an Attachment of Earnings Order can be made. An Attachment of Earnings Order cannot be made against a debtor who is self-employed, unemployed or against a pension income.

Form N337 with a fee £110 must be lodged with the court. If money is owed by two debtors in respect of the same debt, for example, two tenants or a married couple, separate forms for each one are required. The court will send the judgment debtor form N56 which requests details such as their name and address, their dependents, the details of their employer, their income and outgoings as well as any other debts and county court judgments that they have. The debtor can also make an offer for payment on this form.

Debtors can also ask the court to make a 'suspended attachment of earnings order', which could be granted if, for example, a debtor may lose a promotion, or may lose their job if their employer discovers they are in debt.

If the debtor does not send N56 back to the Court within 8 days, the court will serve the debtor with a form N61 chasing the N56. If they still fail to provide the N56 then the court will serve an N63 which requests their attendance at a hearing to explain why they should not go to prison for 14 days or receive a fine up to £250. It is also a crime to provide false information on form N56.

The order will come into action the next time the individual is paid, unless their next pay date is within 7 following the issuance of the order.

**(+)** The money is deducted at source from the employer which means that it never reaches the debtor. The debtor cannot therefore keep this money away from the creditor.

**(+)** Fear that the employer will find out about the county court judgment and/or financial difficulties often encourages an offer of payment.

**(-)** If the debtor changes employment, the creditor must reapply for the order against the debtor's new employer, if they can ascertain who this is.

**(-)** The rate of deduction from wages is set by the court and is generally low as it must allow the debtor to comply with his other outgoings and financial commitments. Therefore, if the judgment debt is a large amount it may take a long time to recoup the debt."

## Options

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## Advantages / Disadvantages

Charging Order

A County Court Judgement needs to be in place.

"The application for a charging order has two stages - obtaining an 'interim order' and then a 'final order'.  
The court usually grants an interim order to stop the debtor selling the property without the creditor knowing before the final order can be made.  
If a court grants the creditor a final charging order, this means that if the debtor sells their property, they must pay the creditor back out of the proceeds. A final charging order does not mean the property must be sold. If the creditor wants to force a sale of the property, they must apply to the court for a further order called an 'order for sale'.

6-8 weeks to get the final charging order

- (+)** Secured and not vulnerable if the debtor is made bankrupt.
- (+)** Interest accrues if the debt is over £5,000.
- (+)** Costs incurred are added to the judgment debt.
- (+)** Often encourages a realistic payment arrangement so as to avoid a charging order being made.
- (-)** The payment of the debt through realisation i.e. sale of the Property could take years.
- (-)** If there is negative equity, the creditor is not secured.
- (-)** The creditor may have to accept minimal instalments pending sale.
- (-)** The creditor is unlikely to obtain an Order for Sale for a small judgment debt.
- (-)** The Court has discretion not to grant an Order for Sale.

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