

DEBT COLLECTION SERVICES QUALITY ACT EXPECTED TO ENTER INTO FORCE IN MARCH 2024

On 19 May 2022, the new Debt Collection Services Quality Act (*Wet kwaliteit incassodienstverlening*, the "Act") was published in the Dutch State Gazette (*Staatsblad*). The Act is expected to enter into force in March 2024 and will affect debt collection service providers where the debt is due by natural persons in the Netherlands. This includes debt collection service providers which collect debts from natural persons who run a business, e.g. where the debtors are sole traders (*eenmanszaken*) or partnerships. The Act may therefore be relevant for factoring companies, service providers in the financial or e-commerce sector, including e-commerce platforms and Buy-Now-Pay-Later (BNPL) providers, credit or insurance brokers, and parties in securitisation transactions.

In this briefing, we set out what the Act is about and which debt collection service providers may be caught in scope.

BACKGROUND OF THE ACT

The explanatory notes to the Act give the reasons for the new Act, being the functioning of debt collection services in the private sector. In 2015, the Netherlands Authority for Consumers and Markets (ACM) concluded that consumers might be financially harmed by the conduct of debt collection agencies, while the Dutch Consumers Association (*Consumentenbond*) has reported about complaints regarding debt collection agencies since 2014, including that consumers were confronted with wrongful or expired claims, unjustified or unclear collection costs, and with debt collection agencies who threatened them with powers they did not have. The measures introduced by the Act are intended to counteract such conduct and to increase the quality of debt collection services.

SCOPE OF THE ACT

The Act will require a registration with Justis (the Dutch screening authority) of persons or entities engaging in extrajudicial collection activities (*buitengerechtelijke incassowerkzaamheden*), being activities to attain out-of-court settlement of claims for payment of a sum of money:

Key issues

- Debt Collection Services Quality Act to enter into force in March 2024
- Regulates collection of debts due by natural persons in the Netherlands (including those running a business through non-legal entities)
- Requirement to register with screening authority Justis
- Administrative and/or criminal fines for breaches
- Relevant for factoring companies, Buy-Now-Pay-Later (BNPL) providers, credit and insurance brokers, and parties in securitisation transactions

- a. that are provided or offered in the exercise of a business that is directed, in whole or in part, at such activities, or in a manner as if they were provided or offered in such way;
- b. for a third party or after transfer of the claim; and
- c. in respect of fulfillment by a natural person who is a Dutch resident.

Criterion (a): the explanatory notes to the first criterion "in the exercise of a business" indicate that activities are in principle within scope when performed in a professional manner and directly or indirectly aimed at earning income or making a profit. This would in principle exclude a company that collects a receivable after such receivable has been assigned to it. However, it is clarified in the explanatory notes that an enterprise that purchases receivables in bulk and collects these receivables as its business, falls within scope.

It is irrelevant under what name the activities are conducted, and no reference to 'debt collection' is required to fall within scope. The phrase "or in a manner as if they were provided or offered [in the exercise of a business]" is vague, but according to the legislator this covers "those who act 'professionally' in a grayer area in order to collect an outstanding claim". Apparently, it is presumed that the latter category should still have the aim to earn income or make a profit of the collection activities, even though this may be more indirectly.

Criterion (b): the explanatory notes to the second criterion "for a third party or after transfer of the claim" indicate that activities are only within scope if the collection activities are carried out for a third party or after transfer of the claim (i.e. to a purchaser of receivables). The rules therefore apply if, in short, the original creditor has handed over the collection task. A company that collects an invoice that has been sent for goods or services supplied by itself is not covered by the Act. If an original creditor assigns to a third party a receivable under a contract entered into by that original creditor for the supply of goods or services and such original creditor is subsequently appointed by that third party to continue the debt collection on behalf of such third party, we believe that it can be argued, based on the explanatory notes, that the original creditor should not fall within the scope of the Act. Also, a claim that is collected upon subrogation is not within the scope of the Act.

Criterion (c): the explanatory notes to the third criterion, i.e. the claim is due by a natural person that is a Dutch resident, state that not only debt owed by consumers is in scope but also debt owed by natural persons who act in the course of a business or profession, including sole traders (*eenmanszaken*) and partnerships that are not in the form of a legal entity and where claims may be recovered from the private assets of the relevant partner(s).

The explanatory notes make clear that the Act will apply to service providers who operate in the Netherlands, regardless of where they are located. This means that also foreign parties must be registered with Justis before engaging in extrajudicial collection activities in the Netherlands, i.e. where the debt is due by a natural person who is a Dutch resident.

An example of an entity in scope are factoring companies. Buy-Now-Pay-Later (BNPL) providers may be within scope depending on the exact arrangements made with merchants. Credit and insurance intermediaries may also be in scope. In respect of the latter, it is relevant to note that the Act will apply in addition to the Dutch Financial Supervision Act (*Wet op het financieel toezicht*,

the "FSA"), which includes license requirements for, inter alia, consumer credit providers, consumer credit intermediaries and insurance intermediaries. To the extent claims for payment arise from insurance or consumer credit agreements, license requirements under the FSA need to be considered as well. Holders of an FSA license are not exempt from the scope of the Debt Collection Services Quality Act, but they are not automatically caught either. As mentioned, a company that collects an invoice that has been sent for goods or services supplied by itself, i.e. an original creditor, is not covered by the Act. Whether credit or insurance intermediaries that collect invoices are in scope, is not clear. Even though the explanatory notes particularly mention as examples of entities within scope 'debt collection agencies' (*incassobureaus*) and 'purchasers of receivables in bulk' (*opkopers van vorderingen*), which would seem to exclude credit and insurance intermediaries, and furthermore that the business of such intermediaries is not particularly aimed at collecting invoices, collecting invoices (insurance premiums) may be regarded as an ancillary activity and could fall within scope of the new rules.

SPVs in receivables finance transactions and securitisations should generally not be in scope, assuming that debt collections are outsourced to a servicer that is registered in accordance with the Act. This is because the Act applies to the party that actually collects invoices and not to the party that has merely purchased the receivables. Collection foundations that are used in securitisation and other structured finance transactions should not be in scope either, in particular where these foundations are established and used by creditors for efficiency or asset segregation purposes and not as a commercial debt collection proposition.

REQUIREMENTS IMPOSED ON DEBT COLLECTION SERVICE PROVIDERS

Affected debt collection service providers must register with Justis (the Dutch screening authority) before they may engage in debt collection activities. Relevant details will be included in a public register. Registered providers will need to comply with the rules of the Act (as summarized below). Special rules apply to bailiffs and lawyers, who do not need to be included in such register but will be subject to the other requirements of the Act.

Name usage and contact details

Debt collection activities shall only be performed or offered under a name and with contact details as listed in the register. A service provider who performs work on behalf of a client (e.g. the creditor) will have to be make clear in communications that the debtor deals with a debt collection service provider.

Staff

Staff that will be charged with contact with a debtor or creditor or with the management thereof, shall submit a statement of conduct (*verklaring omtrent het gedrag*) to their employer (the debt collection service provider) that is not older than three months. This shall be done before such persons are employed.

Appointment of directors of debt collection service providers will require inclusion of their name in the public register of authorized firms. Directors will need to be screened on integrity by Justis before they can be registered.

Quality requirements

- Persons charged with performing or offering extrajudicial collection activities, or who manage these activities, shall be sufficiently skilled and periodically maintain their professional competence.
- Debtors and creditors must be provided with insight into the structure of the claim for payment and the grounds of the claim shall be specified as well as possible.
- A provider of extrajudicial collection activities shall ensure proper dealings with debtors and creditors and ensure adequate information provision towards them.
- Business operations and administration thereof shall be properly organized.
- A complaints procedure must be in place, as well an affiliation with a dispute settlement organisation.
- It shall be recorded in writing how the abovementioned requirements are met.

The above requirements will be further specified by Decree.

INFRINGEMENTS

Infringements of the Act may be enforced through administrative fines, orders under penalty payment, or in severe cases de-registration. Offering extrajudicial collection activities without being registered will be a criminal offence too. Administrative penalties may amount to EUR 90,000, while criminal penalties may amount to EUR 900,000. In case of enforcement under criminal law, other measures may be imposed too.

CONCLUDING

The Act is expected to enter into force on March 1, 2024 and will apply directly from that date to any service providers that collect debt from natural persons in the Netherlands. A grandfathering term of one year, in respect of the registration requirement only, is available for service providers that already engaged in relevant activities before that date. This means that most parts of the Act, including the quality requirements discussed above, will apply to all affected service providers from the date at which the Act will become effective.

CONTACTS



Nienke van Stekelenburgh
Partner

T +31 20 7119 654
E nienke.vanstekelenburgh@cliffordchance.com



Marijke van der Weide
Counsel

T +31 20 7119 190
E marijke.vanderweide@cliffordchance.com



Erwin Schreuder
Senior Associate

T +31 20 7119 227
E erwin.schreuder@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, Droogbak 1A, 1013 GE
Amsterdam, PO Box 251, 1000 AG
Amsterdam

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