

The Netherlands: Abolition of transfer and pledge prohibitions



Recently, the Dutch Senate has adopted the Act on the Abolition of Pledge Prohibitions (*Wet opheffing verpanding-sverboden*). This Act will enter into force on 1 July 2025.

It puts an end to contractual stipulations in commercial transactions that restrict the transferability and pledgeability of monetary claims. This Dutch legislative amendment is particularly relevant for financing practices, aiming to provide companies with more credit capacity and improve financing possibilities.

Background

As a general rule, monetary claims are freely transferable unless restricted by law or the nature of the right itself. However, under current Dutch law, the transfer or pledge of claims can be contractually excluded, also in rem. Such clauses are widely used in certain sectors, such as the construction and retail sector, primarily due to debtors' preference to avoid being confronted with new creditors and payment addresses. For creditors, especially smaller businesses, these clauses can be problematic. The

clauses prevent monetary claims — which are particularly suited as collateral due to their relatively straightforward collection and enforcement — from being traded or used to secure financing.

Despite the disadvantages, creditors often accept such clauses because they lack bargaining power when dealing with larger contracting parties. As a result, the value embedded in these monetary claims remains untapped. It is argued by the Dutch legislator that this restricts access to credit or results in higher interest rates, as creditors are unable to use the claims as security.

Relevant changes

As per 1 July 2025, under Dutch law stipulations between a debtor and a creditor that prohibits or restricts the transferability or pledgeability of monetary claims — B2B or B2C — will not be possible anymore. Any clause that prohibits the transfer or pledge of such claims will be null and void by operation of law. Furthermore, clauses that do not explicitly prohibit transfer or pledge, but seek to hinder these rights — such as penalty clauses or provisions

imposing conditions on transfer or pledge — will also be deemed null and void. We note that certain claims are excluded from the Act, such as claims under current or savings accounts, claims under loan agreements with several lenders (syndicated loans) and claims of or against clearing institutions, central banks, central counterparties, resolution institutions or clearing houses.

The Act also introduces the requirement for written notification to the debtor when a monetary claim arising from business or professional conduct is transferred or pledged. Until notified in writing, debtors may continue to discharge their payment obligations to the original creditor. This requirement does not apply to the excluded claims mentioned above.

Furthermore, as of 1 October 2025, the Act will also apply to existing contracts. This means that, from that moment, any existing non-transferability or non-pledgeability clause will be null and void. Claims that previously could not be transferred or pledged due to a such clause will become transferable and pledgeable.

The Act on the Abolition of Pledge Prohibitions improves financing possibilities for creditors. We note that the foregoing is applicable when Dutch law governs the relevant claims. When a debtor is located outside of the Netherlands or when the agreement (and related claims) is not governed by Dutch law, it could be the case that non-transferability and non-pledgeability clauses in such agreements are still valid. ■



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