



International Debt Collections Handbook

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International Debt Collection Handbook

The International Debt Collection Handbook provides everything you need to know about debt collections in a overseas countries.

Navigating the diverse and often complex country specific debt collections procedures along with the various legislative and cultural approaches in different countries presents major challenges for many companies and as specialists in this field, we know better than most, the type of obstacles you're likely to face.

To support you in selecting the right approach to debt collection in the countries in which your business operates, Atradius Collections has developed and compiled the International Debt Collection Handbook for you. It contains a wealth of specialised and detailed information on every aspect of debt collection, so we hope it becomes an indispensable business tool that you will use regularly.

It's also very easy to use. Just choose a country from the comprehensive list and you will find insight and in depth detail on the different stages of amicable settlement, the financial regulations that apply to collections, legal proceedings and insolvency procedures.

We hope you find it both interesting and, more importantly, useful.

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1. About Atradius

1.1 History

Atradius was originally founded as NCM in the Netherlands in 1925 and was created with the goal to improve trade for companies in the Netherlands. In Germany, Atradius' roots stem from Gerling Credit, which was established in 1954 and operated solely out of Germany until 1962 when it opened its first international office in Switzerland.

In Spain, Crédito y Caución was founded in 1929 and focused on growing steadily to become the dominant credit insurer and surety company on the Iberian Peninsula. The heritage, knowledge and exemplary service standards of these three companies is now combined within the Atradius Group, creating Atradius Collections as a global leader in business to business debt collection.

With such a pedigree and global reach, Atradius Collections is equipped to not only leverage successful debt collection on behalf of our customers, but also sets out to maintain high standards in the market and has become a key player in the B2B collections market.

As a consequence of being a separate division within the Atradius Group, we hold a strong position, sharing history, knowledge and reputation, which helps ensure that we deliver when it comes to collecting your outstanding debts, outsourcing your receivables management or guiding you along the route to growth. That is what we do best.

Atradius provides you with best in class collections plus a range of solutions covering your receivables management needs. Our integrated worldwide network and operations are unique in the market, offering you a dedicated contact person supported by a team of professional staff in the background to cover all your needs. Our pricing is transparent and value based, with a global mindset to keep it simple.

We are unique when it comes to our online collections management system Collect@Net, which allows you to place and manage debts 24 hours a day, 365 days per year. Collect@Net also provides you with a fast and flexible service, enabling you to keep track of your cases in real-time, at any time you want, no matter where you are or where your cash is.

We speak your language and have the required local expertise, over 400 collections specialists in over 200 countries. We work as a seamless team with one global process and with worldwide coverage. Our team of local experts are there to help you improve your cash flow.

1.2 Atradius in a nutshell

- More than 350 employees and 300 collectors providing customers worldwide with local expertise
- More than 12.000 clients with over than 100,000 cases per year

- 20 offices around the world
- Over 85 years of experience in credit management
- One global process and IT platform for fast and efficient handling of debt
- One single point of contact for our customers
- One goal... Do what we do best, making us easy to do business with our 'Common International Amicable Approach'

Atradius has developed a strong and automated amicable process based on initiating immediate contact with the debtor. The set of automatic rules in our system helps the collector to take the appropriate and consistent action towards the debtor and the foundation of this approach is called the START rule:

Our new state-of-the-art automated collection process is second to none. Every case; every call; every letter and every action is monitored in a global system.

2. Australia

2.1 Amicable Collection

Atradius Collections Australia conducts all in-house collections in a professional and efficient manner. From submitting a debt to closing the case, the collector is in constant liaison with the client. The collector is responsible for the whole of Australia and also the Oceania region with no need for a local agent. It should be noted that in Australia, the staff control the whole process. The role that is performed is a full function role where collections, relationship management, invoicing/finance and customer service are all part of the day-to-day activity.

Should the need arise for legal action, AC Australia uses a small, select team of experts who provide a personalised service both on the Australian mainland as well as for our Oceania footprint.

In the amicable collection phase, no interest or costs are automatically charged to the debtor by law. If the client's terms and conditions or contracts specifically allow for interest to be added to a debt, it can be recovered from the debtor. However, in most cases they will not pay these unless they wish to continue to trade with the client.

In the event of legal action being undertaken, the Courts in each state allow for a prescribed amount of interest to be added to the summons along with most of the costs in issuing the proceedings. Again it is sometimes difficult to enforce and recover these fees and it often comes down to a negotiation between client and the debtor.

2.2 Legal Phase

A NSW perspective

The New South Wales Civil Court jurisdiction is divided in the Local, District and Supreme Courts of New South Wales.

The Local Court has jurisdiction where the amount in issue is AUD 60 000 or less. Local Court matters for AUD 10 000 or less are in the Small Claims Division of the Local Court, with the balance being covered by the General Division.

The District Court has jurisdiction where the amount in issue is between AUD 60 000 and AUD 750 000, though it also has jurisdiction below the AUD 60 000 threshold in certain circumstances.

The Supreme Court has jurisdiction where the amount in issue is greater than AUD 750 000, though it also has jurisdiction below that sum in certain circumstances.

2.2.1 Stage 1: Information Exchange

2.2.1.1 Commencing Action

Actions are commenced by the filing and serving of a statement of claim by the Plaintiff. The Plaintiff is free to commence proceedings at any Local Court in NSW, although, as set out below, the Defendant/s may be able to have the proceedings

transferred to a more appropriate Court, which usually means a Court that is more convenient for the Defendant/s.

The Plaintiff is required to set out sufficient facts to allow the Defendant/s to know the case to be answered.

An exception is the so called 'short form pleadings' contained in Rule 14.2 where pleadings can be for things such as "goods sold and delivered by the Plaintiff to the Defendant". The rule allowed the Defendant/s to serve a notice to plead facts should they require further information.

The mode of service of the statement of claim can be personal, but the following service is allowed: Service of individuals by ordinary post by the Court – it is deemed served four working days after postage if the envelope is not returned within 28 days. Please note that the Plaintiff cannot serve statements of claim on individuals by post.

Service by ordinary mail on corporations, under the Corporations Act, registered business names, (under the Rules) and unregistered business names (under the Rules). Under the Rules, service by mail on businesses, registered or unregistered, is deemed to be effecting seven days after postage.

2.2.1.2 Defending Actions

A Defendant who wishes to dispute the amount claimed by the Plaintiff, is required to file a notice of grounds of defence (Form 6) within 28 days of service of the statement of claim or, if later, before default judgement has been applied for. In other words, the Plaintiff cannot apply for default judgement until 28 days from the date the service has elapsed.

When preparing a defence, the Defendant has the option to bring a cross-claim against the Plaintiff in relation to a counter-claim, a set-off or join a third party by way of cross-claim if they wish.

Should the Defendant want to transfer the matter to a more appropriate Court this is the time for them to file a notice of motion – transfer of Local Court (Form 59). Rule 44.1 sets out some of the circumstances to be taken into account if such a motion is filed. Should the Defendant file such a motion, the Plaintiff has 14 days from service of the motion to respond by filing a notice specifying appropriate Local Court / opposing transfer (Form 60).

There is also a right to transfer the proceedings under Rule 8.2.

2.2.2 Stage 2: Adjudication and Judgement

2.2.2.1 Default Judgement

If a Defendant has not paid the amount claimed or filed a defence within 28 days of service of the statement of claim, the Plaintiff is entitled to apply for default judgement against the Defendant (Part 16).

There are three types of default judgement, one for liquidated claims, one for unliquidated claims and one for detention of goods.

An application for default judgement in a liquidated claim is made by filing a notice of

motion –this includes an affidavit in support by an officer of the Plaintiff, confirming the indebtedness of the Defendant.

An application for default judgement in an unliquidated claim is made by filing notice of motion – this includes an affidavit in support by an officer of the Plaintiff going to the amount claimed, including evidence as to quantum.

An application for default judgement in a claim for detention of goods is made by filing notice of motion – default judgement for detention of goods (Form 30) which includes an affidavit in support by an officer of the Plaintiff going to the fact that the matter has not been settled and the identity of the goods to be detained.

In all three applications the affidavit in support of the notice of motion must be filed within 14 days of swearing, which can cause a problem in trying to retrieve them from the client in time. A judgement can be enforced for 12 years, with interest accruing from the day following the date of judgement.

2.2.2.2 Appeal

Appeals from the Local Court are to the Supreme Court.

Appeals must be lodged within 28 days of the date of the decision, or such other time as allowed by the Court.

2.2.2.3 Garnishee Orders

A garnishee order is an order by the Court, which orders a specified person (or organisation) that owes money to the debtor to pay it to the creditor. A garnishee order is applied for by filing a notice of motion – garnishee order. The order is usually used to receive payment from a bank (if the debtor has an account with a credit balance) or an employer to garnishee a proportion of the debtor's wages.

A garnishee order can be used against anyone who owes the debtor money - including solicitors holding money in trust, tenants, real estate agents or persons who have a contract with the debtor.

2.2.2.4 Insolvency

Insolvency is a way to enforce a judgement if the amount owing is AUD 2 000 or more. Insolvency is taking steps to either bankrupt in case the debtor is an individual, or wind up in cases where the debtor is a corporation.

3. Austria

3.1 Amicable Phase/General Information

3.1.1 Interests

Atradius Collections always charges interest to debtors calculated from the base rate set by the Austrian National Bank plus 8% on a daily basis (see European Directive 2000/35/CEE Article 3 Section 1d in conjunction with paragraph 1333 section 2 General Austrian Civil Code).

From a cultural point of view, Austrian debtors are used to paying late payment interests, though often the actual amount of the interest payment is considered a matter of negotiation between debtors and collectors.

3.1.2 Debt collection costs

Collection Costs (“Inkassokosten”) can be charged according to § 1333 ABGB as damage for delay. Austrian cases are dealt with by our German subsidiary, so therefore we apply the same debt collection costs that are charged to German debtors, calculated on the basis of the RVG (Rechtsanwaltsvergütungsgesetz), the German statutory lawyers’ fees.

AC Germany forwards all recovered debt collection costs to our client to reduce the claim, or retains the costs instead or adds them to the success fees. This depends fully on the contractual agreement between the client and AC.

Court costs and lawyers’ costs are also chargeable to the debtor when a judgement is made in favour of the creditor.

3.1.3 Prescription

The general litigation period is 30 years according section 1479 ABGB (Austrian Civil Code). Exception to this are regulated in sections 1486 ff ABGB.

For example,

- Claims out of deliveries and services are prescribed after 3 years calculated from the due date
- Damage claims are prescribed after 3 years calculated from the due date
- Transport claims are prescribed after 1 year from the time the transport took place

3.1.4 Accepted Payment Methods

The most common payment methods are bank transfer and check payment. AC also accepts drafts, but these are very rare in Austria. We do not offer the direct booking off from debtor accounts.

3.1.5 Disputes

We always try to reach an amicable solution between creditor and debtor. To accomplish this, we always require all underlying contractual documents (e.g. signed contracts, orders, order confirmations, invoices and delivery notes as well as all standard terms that have been agreed upon).

We will always carry out an examination and analysis of the case in-house, supported by our legal team.

3.1.6 Investigating the financial situation

In Austria we contracted very experienced reporting agencies to assess the financial situation of debtors, often including real estate and other enforceable assets. In combination with our own phone contacts, we get a reliable impression and understanding of a debtor's financial situation and we are able to advise on the next step.

3.1.7 Private investigation

In order to trace a non-registered debtor and / or in case of potential fraud, it is advisable to engage a private investigator for some cases. We cooperate with an experienced agency and are able to offer a basic report for 60 – 160 €.

3.1.8 Securing the debt

To reclaim the outstanding amount as quickly as possible, we usually do not accept payment plans beyond six months. Occasionally, when a debtor is willing to pay but based on his financial situation, is unable to comply with a six-month deadline, we are prepared to accept a longer running payment plan.

However, we then request that the debtor secures the debt in favour of our client. This can be done both amicably and cost efficiently, by providing an acknowledgement of debt, authenticated by a notary and immediately enforceable if the agreed payment terms are breached.

The corresponding notary costs have to be carried by the debtor, the notary will send the enforceable engrossment directly to us. In exceptional cases the cost of obtaining such a title is advanced by us, if the debtor is not capable of doing so. Costs are then recharged to the client, although an approach like this has to be evaluated on a single case basis and always depends on the outstanding principal amount.

3.2 Retention of title

Austrian law recognises the plain retention of title. The title provides the basis of collateralisation of the purchase price, but not of other outstanding debts. Converse agreements are ineffective. The retention of title has to be stipulated within the contract, as it is not automatically included as law.

The vendor has to prove the signing of an agreement, as a link on the invoice is not sufficient. It takes a client's order including general terms and conditions, which refers to the retention of title, to ensure it is enforceable. The opening of insolvency proceedings do not affect the retention of title.

3.3 Legal Procedures

3.3.1 Legal Dunning Procedure (Mahnklage)

The Austrian legal dunning procedure is a 1 step process for payment claims up to 75,000 EUR. The outcome is the Payment Order (Zahlungsbefehl). For a claim up to K[€] 10 the local court is competent. For claims exceeding K[€] 10 the district court is the competent one. Court releases a limited Payment Order ("bedingter Zahlungsbefehl.") This order will be served to the debtor.

The debtor can object against it within 4 weeks after delivery or pay within 14 days the principal amount together with the interest. If no objection is filed, the limited Payment Order becomes valid as a final Payment Order. The execution can thus be started. If the objection is filed within the deadline of 4 weeks, this process will be transferred into a normal court procedure.

3.3.2 Court procedure

For all claims exceeding 75,000 EUR and in case of an objection against the Payment Order a normal court procedure takes place.

3.4 Enforcement

After release of the judgement the enforcement phase starts. The enforcement is comparable to the German Execution procedure under 9.3.

Timelines for the legal procedures and the enforcement

The timeline for the Payment Order process is around 13 weeks from the application until receiving the Payment Order for Execution. However, if the debtor raises a dispute, the normal court procedure takes place which lasts longer. The timeline for the execution phase to achieve a result (payment, execution fruitless pp.) is around 15 weeks. The judgement is enforceable for 30 years.

3.5 Insolvency Procedure

The Insolvency Procedures in Austria changed in January 2010 and the new law is called the Insolvency Code ("Insolvenzordnung"). The German version of this law can be found here:

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001736>.

An official English translation is not available at the moment. The central procedure is still the "Zwangsausgleich", which has been rephrased to "reorganisation plan".

This is a special procedure in which the debtor has to offer a minimum dividend to his creditors of 30% and the payment needs to be made within two years. More than 50% of the creditors must agree to the reorganisation plan.

Those creditors (the majority of more than 50% headcount) must settle a minimum 50% of the total outstanding amount. Both conditions (majority of heads and majority of outstanding amounts) must apply. The court finally decides upon it. The insolvency procedure takes 2 to 12 months. The payment of dividends takes up to two years.

The average dividend in Austria in 2009 was 9.7%. With the new insolvency law we do not yet have significant enough numbers to have assess the development in 2010. The coming 2 to 3 years will show whether the average dividend can be increased as intended.

An insolvency procedure can be managed by a lawyer, the three privileged creditor associations KSV, AKV and Creditreform or the creditor himself.

4. Belgium

4.1 Amicable phase

Atradius Collections Belgium can provide you with direct collection activity managed by a selected network of local agents, who visit debtors throughout the country in order to collect money.

According to our experience, this solution is particularly successful for medium-low amounts, for specific debtor's categories (individual sole traders, shops, small companies) and for particular trade sectors (e.g. food, textile, clothes and shoes). The agents' network can also investigate locally in order to search an untraceable debtor.

4.2 Legal phase

AC Belgium can accommodate you with a selected and professional network of lawyers experienced in the judicial credit collection activity. This network covers the territory of Belgium and manages legal action in all Courts districts.

4.2.1 Information about the financial health of the debtor

AC Belgium can evaluate the debtor's solvency and financial situation. In order to investigate more accurately, we can provide you with extra services, such as research on bank accounts or research on officially registered goods, such as vehicles, equipment and real estate. All these elements can help create a clearer picture of the debtor's situation in order to act in the best way to collect the money owing.

4.3 Interests

4.3.1 Amicable phase

Interest can be recovered from the debtor based on the agreed terms and conditions of sale. The claim of interest and a possible reduction can be the object of negotiation between the collector and the debtor.

4.3.2 Legal phase

Interests can be recovered from the debtor according to the agreed terms and conditions of sale. However, the Court can reduce or cancel the interests foreseen by the contract, e.g. because of the lack of proof of written acceptance of the terms and conditions of sale by the debtor.

When the contractual interest cannot be charged, the interest at the legal rate or at the rate according to the statute of 08.08.2002 (based on the European Directive 2000/35/CEE) are claimed.

The rate of the legal interest is fixed every year by the government and communicated in the Official Belgian Journal; the rate of the interests based on the statute of 08.08.2002 is communicated each 6 months by an official statement in the Official Belgian Journal).

4.4 Penalty clause

4.4.1 Amicable phase

A penalty clause as foreseen in the agreed terms and conditions of sale can be recovered from the debtor; however, the use of a penalty clause and a possible reduction can be the subject of negotiation between the collector and the debtor.

4.4.2 Legal phase

A penalty clause as foreseen in the agreed terms and conditions of sale can be reclaimed. However, the Court can reduce or cancel the penalty clause, e.g. because of the lack of proof of (written) acceptance of the terms and conditions of sale by the debtor.

4.5 Legal proceedings

4.5.1 Applicable law

Legal action to recover receivables is based on the general principles according to the Civil Code

(Code Civil/Burgerlijk Wetboek), the Commercial Code (Code de Commerce/Wetboek van Koophandel) and the Judicial Code (Code Judiciaire/Gerechtelijk Wetboek). Particular rules of law can be used in special circumstances or special cases.

The most common insolvency procedures (bankruptcy and judicial organisation) are governed by special laws listed in the Commercial Code.

4.5.2 Judicial organisation

Court depend on the Amount of the claim:

- Justice of the Peace <1 860 EUR Merchant and non-Merchant
- Commercial Court >1 860 EUR Merchant
- Court of First Degree >1 860 EUR Non-merchant

4.5.3 Appeal

Justice of the Peace Court in First Degree. Mostly non-commercial cases.

No appeal if amount is <1 240 EUR

For claims > 1240 EUR Appeal in front of the First Instance Court

First Instance Court (con merchant cases >1 860 EUR) in First degree - appeal in front of the Court of Appeal

Commercial Court (Commercial cases >1 860 EUR) in First Degree - appeal in front of the Court of Appeal

According to the principles of the judicial code, the action against the debtor in payment of the claim is brought before a competent court in the district where the debtor has his place of residence, where the debtor is an individual or at the registered address if the debtor is a company.

4.5.4 Documents required for legal action

Documents needed:

- Copy of the invoices
- Copy of the terms and conditions of sale
- Power of attorney signed by the client
- Copy of the formal notices and/or reminders sent to the debtor It is highly recommended to produce also proof of orders, proof of delivery of the goods and any other written document signed by the debtor in which he acknowledges the claim, for example a request of payment by instalments.

4.5.5 Legal proceedings

4.5.5.1 Summons by bailiff

The notification of action in payment of the claim (summons) is presented to the debtor by the bailiff who will summon the debtor before a competent court in the district where the debtor has his place of residence, where the debtor is an individual or at the registered address if the debtor is a company.

4.5.5.2 Introductory hearing & judgement

4.5.5.2.1 *The debtor does not appear in Court or is not represented by legal counsel*

The lawyer in charge of the case will submit the paper file with all the necessary documents to the Court. If the Court is in possession of the elements it needs for a decision, it will take the case in consideration. Judgement is usually given one month later although it can take more time.

4.5.5.2.2 *The debtor appears in Court or is represented by legal counsel*

When the paper file is communicated to the other party and the latter communicates its paper file in return, a calendar of exchange of written arguments and a date on which the case will be pleaded and heard by the Court, is set.

If the Court is in possession of the elements it needs for a decision, the Court will take the case in consideration. Judgement is usually pronounced one month later even though it can take more time.

4.5.5.3 Average duration of a legal procedure

The time frame to get a judgement (enforcement not included) is on average four months. In cases involving a dispute or an appeal, it can take up to several years.

4.5.5.4 Costs of legal action

4.5.5.4.1 *Costs of the legal proceedings*

Summons and inscription in the Court's calendar cost approx 250 EUR. The text of the summons is drafted by an in-house lawyer.

Indemnity of Procedure: depends on the amount of the claim and is based on an official legal tariff (with minima and maxima). The Court can decide the exact amount but cannot grant an amount below the minimum and not over the maximum. These costs are rechargeable to the debtor, except if the Court decides otherwise.

4.5.5.4.2 *Costs and fees of legal representation*

These costs depend on the importance of the case, the complexity of it, the duration and the tasks performed by the lawyer and they are not rechargeable to the debtor.

4.5.5.5 Summary procedure

In Belgium there is a summary procedure to obtain payment. For the recovery of receivables, this procedure is not used because of the following disadvantages:

- Necessity of a written and signed document from the debtor to establish the existence of the claim
- The whole claim cannot exceed 1 860 EUR
- The claim has to be undisputed
- The request to the competent court has to be signed by a lawyer

4.5.6 Power of Attorney

In Belgium, a Power of Attorney is needed for each file and has to be signed by the creditor's legal representative.

The proxy must be drafted in the language of the legal procedure i. e. in French, Dutch or German.

4.5.7 Execution of a judgement

The enforceable copy of the judgement is communicated to the bailiff who will officially notify the judgement to the debtor. The debtor has 30 days from this notification to appeal against the judgement.

The judgement is definite as soon as this period of time has expired without appeal. The bailiff officially sends out a legal notice to pay to the debtor, but if the debtor does not comply, the enforcement of the judgement by bailiff can begin.

In these circumstances, the bailiff can proceed with the attachment of debtor's movable property and a public sale of these goods if the debtor does not pay. If the debtor owns real estate, the bailiff can proceed with an attachment. If the debtor does not pay, the real estate will be sold in a public sale by a public notary.

4.5.8 Collection costs (Charged to debtor)

4.5.8.1 Costs of the legal proceedings

Summons and inscription in the Court's calendar approx. 250 EUR
Indemnity of Procedure: depends on the amount of the claim
These costs are rechargeable to the debtor, except if the Court decides otherwise.

4.5.8.2 Costs and fees of legal representation

These costs depend on the importance of the case, the complexity of it, the duration and the tasks performed by the lawyer. The costs are not rechargeable to the debtor. Costs of the enforcement of a judgement by bailiff are always recharged to the debtor.

4.5.9 Statute of limitations

In Belgium, the statute of limitations depends of the nature of the invoicing. It is usually 10 years.

4.5.10 Retention of title

The use of retention of title was made possible by the statutes of 08.08.1997 and 17.07.1997 (art. 101).

The retention of title is opposable to third parties in case of bankruptcy, composition and liquidation of the assets of the debtor.

The conditions of opposability to third parties are very strict:

- The clause of retention of title has to be established by a written document at the latest at date of the delivery of the good

- The clause has to be accepted by the buyer. The creditor has to be able to produce proof of it if necessary
- The goods have to be movable and have to be physically still in possession of the buyer. In case of bankruptcy, the action to activate the retention of title has to be initiated by the creditor before the deposit of the first statement of verification of the claims.

If the creditor activates the retention of title after this particular moment in time, his action will be forfeited.

The retention of title is not a successful procedure because of the strict conditions. Almost every time the retention of title is used, one or more conditions are not complied with.

4.6 Insolvency procedures

4.6.1 Bankruptcy

In Belgium only a debtor with the quality of merchant can be declared bankrupt. A trustee is appointed by the Commercial Court in the district where the debtor has his place of residence, if the debtor is a person or at the registered address, if the debtor is a company.

The documents needed to lodge a claim are:

- Copy of the invoices
- Copy of the terms and conditions of sale
- Statement of account
- If requested by the trustee the power of attorney duly signed (see chapter 4.3.5). The claim has to be lodged to the clerk of the Commercial Court within one year after the bankruptcy. Once this period of time has elapsed, the creditor is no longer entitled to lodge his claim. After verification, the claims are accepted or disputed by the trustee. The Commercial Court will decide in case of dispute. The average duration of the handling a bankruptcy is one to five years, depending on numerous factors.

4.6.2 Law on continuity of the companies

The judicial composition has been replaced by the law relating to the continuity of the companies (law 31/1/2009). It concerns merchants, agricultural companies, civil companies with commercial form, the financial difficulties of which can endanger their continuity.

A distinction should be made between amicable agreement (art.15) and judicial reorganisation through amicable agreement (art 43), through collective agreement(art 44 to 58) and through transfer under Court's authority (art 59 to 70).

Amicable Agreement: the debtor can propose to 2 or several creditors an amicable agreement, which under certain circumstances will be opposable to the creditors and to the trustee in Bankruptcy.

In order to obtain a judicial reorganization, the debtor has to submit a Request to the Court with some information, list of secured and unsecured creditors.

If the reorganization procedure is opened, the duration of the “moratorium” will be 6 months with possible extension of 6 further months and even 6 additional months (art38)

The Court fixes the hearing during which it will vote on the Plan and its ratification. The maximum plan duration is 5 years from ratification. The Plan has to be approved by the majority of creditors representing half of all sums due in principle.

As to judicial reorganization through amicable agreement (2 or more creditors), the judge is entrusted with control. As far as judicial reorganization through collective agreement is concerned, the debtor has to advise the creditors within 14 days following judgment.

As to judicial reorganization through transfer under Court’s authority, it is requested by debtor or by the King Prosecutor on Summons or by every person having an interest. During the judicial reorganization, the execution measures are suspended; the debtor cannot be declared bankrupt as long as the Court has not decided on the request. Pursuits against co-debtors and guarantors can be started.

4.7 Type of companies

SA/NV

Responsibility of associates Joint stock company At least two associates are required. Liability limited to the capital invested in the company by each associate.

SPRL/BVBA

Limited Liability Company. Liability limited to their portion. At least two associates are required portion of shares in the company.

SPRLU/EBVBA

Limited liability company. One associate Liability limited to his portion of shares in the company.

SCRI

Cooperative company. Liability not limited

5. Brazil

5.1 LDC

We have an excellent local debt collection attorney in Sao Paulo with correspondents all over the country, always trying to negotiate with the debtors and to collect out of court consequently avoiding as much as possible the complexity of the Brazilian legal system.

5.1.1 Other actions

- a) Our attorney can proceed – also with the assistance of specialised local companies – to an accurate check on a debtor’s solvency on assets, liabilities, financial and historical status, reputation in the market, existence of protests or legal actions filed against the debtor.

Legal opinions can be provided by the attorney, if needed.

- b) In order to avoid payment of a bill of exchange and to be blacklisted all over the country, the Brazilian debtor may file a Writ of Prevention before the protest of the bill of exchange is carried out. The debtor then has 30 days to file the principal action aiming at making the bill of exchange/promissory note or any kind of negotiable instrument null and void.

5.2 Interest

Contractual interest agreed by the parties may be claimed. If not agreed, legal interest, generally 6 % per annum, is applied.

5.3 Legal phase/Documents required

Civil law prevails over common law practices. Although most of the Brazilian law is codified, non-codified statutes represent an important part of the system. Each state and municipality has its own judicial system. Justice of Peace and Magistrates deal with commercial and other civil cases in first instance. Decisions from state and municipal courts may be appealed to by the federal courts and if necessary, up to the Supreme Federal Court. No legal action is recommended without proper documentation.

Specifically any of the following documents: negotiable instruments or execution instruments, promissory notes, bills of exchange, cheques, contracts duly executed by the parties and 2 witnesses, mortgages or Confession of Debt before a Notary. And not unusually strong evidences of the debt such as invoices, purchase orders, proof of deliveries, written acknowledgments of debt, payment schedules proposed by the debtor or time-barred execution instruments that do not comply with the requirements.

In general, the Brazilian legal system offers many remedies to the debtor. This makes any legal action extremely uncertain and time-consuming. Each case must be analysed thoroughly before advancing any legal action.

5.4 Legal actions (type & costs)

There are basically three different proceedings with respect to unpaid debts according to Brazilian law. The proper action depends on the available supporting documents.

5.4.1 Execution proceedings

When the creditor has negotiable instruments as indicated above, these instruments should not be time-barred under Brazilian law. Execution proceedings are summary procedures. The debtor is served with the Notice and has to pay within 24 hours or to indicate assets to be seized. The opportunities of making opposition are extremely limited. In case of Appeal to the Judgement, proceedings are not started until final judgement in Appeal.

5.4.2 Monitory action

When the creditor does not have executory instruments but strong evidences of the debt as indicated above, the debtor is served with a Notice to pay within 15 days or to make opposition. If there is a defence, the action is advanced as if it were a ordinary proceeding until judgement. If no defence is presented, execution will be immediately carried out. In case of Appeal to the Judgement, proceedings are halted until final judgement in Appeal. In the Monitory action, the creditor may be required to deposit a security for costs in the amount of 10% - 20% of the claim in cash or via a Bank Guarantee. That security is a guarantee to cover opposing attorney's fees and court costs if the creditor loses the case.

5.4.3 Bankruptcy

When the creditor has executory instruments that are not time-barred. However, the creditor has to deposit a security of 10% - 20%. This type of action is time consuming and not particularly recommended.

5.5 Power of Attorney

Each attorney must be empowered to act on behalf of the creditor by a Power of Attorney authenticated e.g. by the Consulate of Brazil in the creditor's country.

5.6 Execution of Judgement

Enforcement of any judgement will be made on movable or immovable assets, and this can last several years depending on the cases and circumstances.

5.7 Collection costs

The court costs are generally charged to the losing party by the judge who also determines which amount of attorney's fees have to be awarded to the winning party's lawyer (\pm 10% - 20% of the claim).

It is sensible to foresee a budget of 25% - 30% of the claim if the creditor wants to go legal, plus the security for costs as indicated above. The court costs are difficult to estimate since they depend on variable facts, number of services and number of remedies. On average court costs mount up to more than 10% of the claim.

5.7.1 Statute of limitation:

- Commercial invoices - 10 years
- Promissory notes - 3 years
- Bills of exchange - 3 years
- Public Confession of Debt - 5 years
- Check - 6 months

5.8 Expected Time Frame

8 – 10 years in ordinary procedure.

Several months up to a few years in execution proceedings and monitory action depending on the circumstances and execution.

5.9 Insolvency proceedings

5.9.1 Preventive reorganisation

Requested only by the debtor. The debtor's motion must substantiate the debtor's state of insolvency. The debtor's assets must be sufficient to satisfy at least 50% of the unsecured claims and the debtor must give evidence that the company will be able to become a viable entity after reorganization.

Secured creditors are not subject to the reorganisation. The unsecured creditors have only between 10/20 days left to lodge proof of debt after first publication in the Diario Oficial.

During preventive reorganization, the debtor may retain possession and control of his assets and may continue to operate. The commissioner acts as a deputy of the court and oversees the debtor's actions.

The unsecured creditors named by the debtor in the motion for preventive reorganisation are deemed subject to the reorganisation and are automatically included in the official list of creditors. Creditors not included in the initial list submitted by the debtor, must file their claims for verification.

The payment schedule submitted by the debtor must propose to pay 50% to all unsecured creditors immediately, or 60% over six months or 75% over 12 months and so forth.

5.9.2 Suspensive reorganisation

Available to commercial entities that have been declared bankrupt concerning avoidance of liquidation.

Only the debtor may request the suspensive reorganisation. As with the preventive reorganisation, the debtor has to propose a settlement and payment plan. The plan must provide for the immediate payment of at least 35% of the unsecured debts or of 50% over two years.

If the legal requirements are satisfied, the judge shall grant the motion filed by the debtor and the debtor will regain possession and control of his assets. If the debtor fails to comply with the payment schedule or any other obligation, the judge will terminate the reorganisation and bankruptcy will resume.

5.9.3 Bankruptcy

Can be filed by the debtor, an unsecured creditor or the Court.

A secured creditor may also file a bankruptcy petition if he waives his security interest or if he can prove that the security interest will not satisfy the debt. The bankrupt entity loses the right to control or manage his assets. Once the bankruptcy order is issued, the trustee assumes possession of the bankruptcy estate and the creditors must file their claims. They have 10 to 20 days from the first publication in the *Diario Oficial* to do so.

5.10 Type of companies

The most frequently used company structures are the *Sociedade Anônima (SA)* and the *Sociedade Limitada (LTDA)*. In both types the participants have limited liabilities.

5.11 Retention of title

Simple retention of title is valid in Brazil. It has to be stipulated in writing with the sealing of the contract. It should describe the goods concerned in detail to make them identifiable. With regards to its validity against third parties, like an acquisition in good faith, the contract should be translated into Portuguese and registered in the competent Public Register

6. Canada

6.1 Amicable

6.1.1 Collection Process

Atradius Collections Canada follows a collection process that is professional at all times with the objective to retain relationships between client and debtor whenever possible. Our combination of professional collection representatives teamed with leading technology, comprehensive collection programs and outstanding customer support is very powerful. In order to facilitate a case, we will conduct a thorough investigation and we research, when necessary, public records, consulting credit rating agency records, and land registries.

6.1.2 Disputes

AC Canada's collectors operate carefully, to fully understand cases filed. Where a dispute arises, AC will communicate between client and debtor in an amicable manner acting as an arbitrator to eventually resolve any issues or concerns that may have caused the debtor to stop paying. Our approach is to avoid costly litigation and to act on the best interest of our clients at all times.

6.1.3 LDC

AC Canada will be in direct contact with all debtors/clients whenever possible, however if required, we have LDC contacts throughout Canada to assist in your collection needs.

6.1.4 Interest

The collection of interest and collection costs are not permissible under Canadian law, however if the Terms and Condition of the contractual agreement with the client and debtor is provided with a clause that permits the collection of such interest and costs, it may be added to the case amount. Note that Canada's Criminal Code makes it a crime to set an interest rate of over 60%.

6.1.5 Language

Canada has two official languages; English and French the latter is used mainly in the provinces of Quebec, Manitoba, Ontario and New Brunswick.

6.2 Legal Phase

6.2.1 Lawyer debt collection

AC Canada offers you a selected professional network of the most experienced law firms in Canada who specialise in the collection of debt.

6.2.2 Legal system overview

Under the Canadian constitution, commercial law is generally within provincial jurisdiction. There are however, exceptions such as interest, currency, bankruptcy and insolvency, which are governed under federal law. Canada includes ten provinces and three territories which all utilise the common law system that originates in Great Britain.

An exception is Quebec that has a civil law system. The Civil Code of Quebec is based on code Napoleon.

6.2.3 Jurisdiction of Court

6.2.3.1 Province of British Columbia

Case amount

A case up to 25.000 CAD is handled in the Provincial Court of British Columbia Small Claims Court division.

Cases exceeding 25.000 CAD are handled in the Supreme Court of British Columbia. There are exceptions where a case greater than 25.000 CAD may waive the excess to be represented in small claims court, or a case less than 25.000 CAD that may be represented in the Superior court with the risk of a penalty of not being awarded court costs.

Court Costs

All costs or part of the costs are awarded to the winner of the trial.

Basic requirements for filing

- Documents must be in English
- A claim must be supported by certified documents
- The client needs to appear in court – may be awarded a proxy holder if the debtor permits

Statutes of limitation

The limitation period to sue on a debt in British Columbia is six years from the later date of when the debt was incurred, or when the debt was last recognized

Currency

Carried out in the currency of Canada unless it is made, executed, entered into, done or carried out in the currency of a different country.

Judgement

- Judgement will often be granted verbally at the conclusion of the trial, but may be delayed a few days to several months with very little power to the parties to hasten the process.
- Foreign judgements are generally recognized in the courts of British Columbia
- Judgement limitation is 10 years Enforcement is carried out via a bank account, or with other monies owing to the debtor, seizing assets of value such as motor vehicles or equipment or by the registration of judgement against titles of property.

6.2.4 Jurisdiction of Court

6.2.4.1 Prairie Provinces – Alberta, Saskatchewan, Manitoba

Case amount

- A case up to 25.000 CAD in Alberta and 10.000 CAD in Saskatchewan and Manitoba is handled in the Provincial Small claims court
- Cases exceeding the Small Claims court provision will be applied for in the Court of the Queen's Bench in each of the Prairie Provinces. Court Costs

General rule is that the successful party at trial is entitled to the costs against the unsuccessful party.

Basic requirements for filing

- Documents must be in French or English and if they are in another language, they must be translated. Preferred language is English.
- A creditor must have originals of all documents relevant to the dispute.
- Statutes of limitation
- Saskatchewan and Alberta the general limitation period is two years
- Manitoba the limitation is six years Currency

Security for Costs if the Plaintiff is out of Province is mandatory in Saskatchewan and Manitoba

Canadian currency exclusively converted in accordance with the rules of the court

Judgement

Useful to conduct an examination in aid of execution or have the debtor complete a statutory declarations of assets. Enforcement tools include: garnishment, seizure of assets or property and appointment of a receiver.

6.2.5 Jurisdiction of Court

6.2.5.1 Province of Ontario

Case Amount

- Cases up to 10 000 (small claims court limit is now 25 000) CAD are presented to Small Claims Court. Creditors and Debtors can represent themselves
- Cases over 10.000 CAD (change to over 25 000) are represented in Superior Court
- Cases under 50.000 CAD, summary trial with no pre-trial and are therefore less expensive
- Cases over 50.000 CAD Extensive pre-trial procedures such as examinations for discovery are common. There is opportunity to obtain damaging information about the debtor. It is common to negotiate the Settlement.

Court Costs

The successful party is usually awarded a portion of their legal fees to be paid by the opposing party.

Basic requirement for filing

- Jurisdiction is established in the location of the debtor
- Documents that support the claim
- Security for costs may be required if the plaintiff does not reside in Ontario to cover costs should the debtor be successful.
- It may be required to have translated documents authenticated by a notary certificate.

Statute of Limitation

Collection action must be filed within two years of the date of default or from the date of the last written acknowledgement.

Currency

Judgements are carried out in Canadian Currency.

Judgement

Can be enforced through the examination of the judgement debtor

Seizure and sale of property; garnishment; sale of real estate

Recognition of Foreign Judgements

To enforce a foreign judgement in Ontario, the court will require certified copies of the judgement, the claim and proof of service of both claim and judgement.

6.2.6 Jurisdiction of Court

6.2.6.1 Province of Quebec

Case amount

- Cases up to 7.000 CAD can be trialled in Small Claims Court
- A plaintiff must represent themselves
- A plaintiff cannot have more than 5 people employed
- Cases up to 70.000 CAD are trialled in the Quebec Court
- Cases greater than 70.000 CAD are trialled in the Superior Court of Canada

Court Costs

Court costs and expert costs are usually awarded to the successful party but not the legal fees. Attorney fees and administrative charges may be claimed if the contract makes acceptable provision.

Basic requirement for filing

- Documents to support the claim
- Security for costs may be required if the plaintiff does not reside in Quebec to cover costs should the debtor be successful
- Unless proceedings by default, witnesses are necessary. Video conferencing is available
- Although French is the official language, the use of English or French is allowed

Statute of limitation

Statute of limitation for commercial documents is three years after the due date. If payments have been made on account the prescriptive period may be interrupted.

New Brunswick Limitation period is now 2 years.

Currency

All currency is in Canadian dollars. If a foreign currency is alleged in the proceedings, the court will be given evidence of the conversion rate.

Judgement

- The debtor or representative of the debtor may be summoned to be interrogated at court as to its assets.
- All assets can be seized except for personal assets. Remedies can include garnishment of bank accounts or other assets in the hands of third parties.
- Foreign judgements are recognized and governed by the Civil Code of Quebec
- Statute of limitation on a foreign judgement is 10 years.
- At any stage of the proceedings the parties may request a settlement conference
- Atlantic Provinces – New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador Jurisdiction of Court

Case amount

Cases are handled in Small claims court

- Up to 25.000 CAD in Nova Scotia
- Up to 8.000 CAD in Prince Edward Island
- Up to 6.000 CAD in Newfoundland and New Brunswick (up to 25 000 handled in small claims court for New Brunswick)
- Up to 5.000 CAD in Labrador Court costs

Legal fees can be recovered as costs along with court fees, witness fees, copying costs etc. Travel costs of the counsel to the place of trial are not generally recoverable, but necessary travel costs of witnesses, including parties, are recoverable

Basic requirements for filing

- Documents to support the claim • Documents must be in English unless the claim is in New Brunswick where the official language is French and English • Translated documents must bear an affidavit by an expert in that foreign language Statute of limitation

Statute of limitation for commercial documents is six years from the time the debt arose. This period may be restarted if the cause of action is confirmed by either a written acknowledgement of the cause of action or by partial payment

Currency

The judgement of the court will be expressed in Canadian dollars. If the debt is in another currency, it will be converted to Canadian dollars with the conversion rate as of the date of entering judgement

Judgement

- The creditor may require the judgement debtor to submit to an examination regarding the nature and extent of the debtor's assets.
- All assets can be seized except for personal assets. Remedies can include garnishment of bank accounts or other assets in the hands of third parties.
- The courts will recognize and enforce foreign judgements if satisfied that the original court had proper jurisdiction.

6.3 Insolvencies - Canada

The insolvency process is a legal proceeding that is dealt with under the provisions of the Bankruptcy and Insolvency Act.

This Act is administered by the Office of the Superintendent of Bankruptcy at a federal level. A Trustee in bankruptcy licensed by the Superintendent of Bankruptcy is hired to handle the process of proposals and bankruptcies. Only licensed Trustees can provide bankruptcy services.

There are four main insolvency options:

1. Proposal - An offer is made to creditors who are owed money in an effort to settle the debt. This proposal may or may not be formal.
2. Bankruptcy - The assets of an individual or company are liquidated and the proceeds are given to creditors who are owed money. Some assets are exempt from liquidation, depending on the province. Secured creditors are paid and once all securities are completed, unsecured creditors are paid with the remaining funds and if any, a dividend. A proof of claims must be filed by the creditor within the prescribed timelines given by the Trustee in order to receive any dividend.
3. Receivership – A secured creditor, often a bank or other large creditor represented by receiver, comes in and generally takes control of the assets of the company. Once a complete audit is performed, the company may operate under the receivership or if it is insolvent beyond salvation, the receiver can petition the company into bankruptcy. When a company operates under a Receivership it may ask for the delivery of goods. These orders are protected by the Receivership and will not take part of a possible bankruptcy as they are guaranteed.
4. Company Creditors' Arrangement Act – (CCAA) – A compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them. The court may, on the application in a summary way of the company, of any such creditor or of the Trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs. This process may last several months or even years.

A debtor company in respect of which an order has been made under this Act may not sell or dispose of any of its assets outside the ordinary course of its business unless authorized to do so by Court.

When a debtor company is engaged in proceedings under the CCAA, it is granted a stay out of other proceedings. Secured creditors are unable to act upon their security and other creditors are unable to seek redress from the courts. The reform is intended to provide the debtor company with greater flexibility in dealing with its property while limiting the possibility of abuse

7. China

7.1 Overview

In 1995, for the purpose of clamping down and punishing improper debt collection activities, the Chinese government issued an administrative regulation of “Notice on Prohibition of Establishing Debt Collections Companies.” In 2000, another notice of “Notice on Revocation of Various Kinds of Debt Collection Companies and Attack on Illegal Debt Collections Activities” was issued.

According to the above regulations, it is prohibited for any enterprises or individuals to establish debt collection companies in any form and to engage in debt collection business. In short, debt collection activity in China is prohibited. But, law firms are exempt from the prohibition.

However, in real practice, the relevant government / administrative authorities are not pro-active in enforcing these rules and generally do not take the initiative to investigate / penalize such debt collection activities, unless there are complaints against dubious tactics employed by debt collectors.

Meanwhile, “debt collection activities” still do not come within the business scope which would be permitted or approved by the Administration of Industry & Commerce. A company, which conducts debt collections activities are in the name of “consulting services” or “credit management services”.

It is noted that Chinese domestic creditors have a completely different attitude to overdue debts from their Western Counterparts. In China overdue debt is handled by negotiation rather than by such forms of intense credit control pressure as phone calls, threatening correspondences, lawyers demand letters etc

7.2 Legal and Judicial System

The modern Chinese legal system mainly consists of three levels of law are:

1. Laws, administrative regulations and departmental rules;
2. Local regulations, autonomous region regulations; and
3. Specific regulations.

The PRC’s legal system is broadly divided into three levels:

1. The central government level;
2. Provincial or municipal government level, and
3. Local municipal or county government level.

In each case, the higher the level of government, the greater the degree of authority and responsibility. Foreign investors need to understand which authorities are relevant to their particular activities and it is important to appreciate that the role of government is very significant in PRC business matters.

There is a hierarchy within the court structure from the top down:

1. The Supreme People’s Courts,
2. The Higher People’s Courts,
3. The Intermediate People’s Courts, and
4. The Basic People’s Courts.

The People's Courts represent the trial organ of the state.

The Basic People's Courts are comprised of more than 3,000 courts at county level, which are further subdivided into about 20,000 smaller units referred to as people's tribunals located in towns and villages. There are 376 Intermediate People's Courts and 31 Higher People's Courts located in the provinces.

A judgment granted by a first instance court can, as of right, be appealed to an appellate court whose ruling is final. Under certain exceptional circumstances, e.g., when there arises a serious misapplication of law, a serious procedural irregularity or when new evidence comes to light, etc., the ruling of the appellate court can further be reviewed.

Litigants are generally limited to one appeal, on the theory of finality of judgment by two trials. Cases of second instances are often reviewed *de novo* as to both law and facts. Judgment at second instance is final, which means that a case is only heard twice by two levels of courts and the last court decision will be rendered final and binding.

7.3 International Treaties

The 1982 Constitution does not specify the treatment of international law in relation to the laws of the PRC. However, in practice the legislative approach has been to automatically incorporate international law as part of PRC law. If, however, the PRC has made a reservation to a provision of a treaty, this aspect or provision of the treaty is not implemented in the law.

7.4 Limitation of action

In general, the limitation of action regarding applications to a People's Court for protection of civil right under general trading is two years and for some exceptional international purchasing contracts is four years.

This means after the stipulated period (counting from the last demand date but not the original due date), the creditor cannot file a claim under the jurisdiction system but only can use other methods to collect their debts.

7.5 Dispute Resolution

Civil or commercial disputes in China can also be resolved through other alternative dispute resolution processes such as arbitration or mediation.

Civil and commercial disputes are traditionally resolved by litigation in the PRC Courts.

An Intermediate People's Court deals with a considerable number of disputes exceeding RMB 20 million at first instance. A Higher People's Court whose jurisdiction varies from province to province and municipality to municipality deals with large claims at first instance.

7.6 Arbitration System

Arbitration bodies are set up in China at the national and local levels. The China International Economic and Trade Arbitration Commission (CIETAC) is the arbitration agency in China that handles international economic and trade disputes.

It is headquartered in Beijing and has branch offices in Shenzhen, Shanghai and Chongqing. In addition, local arbitration bodies such as the Beijing Arbitration Commission and the Shanghai Arbitration Commission arbitrate domestic and foreign-related cases.

Arbitration rulings in China are “One Instance Being Final”, which means that the ruling takes effect immediately upon pronouncement. Even if the parties are not happy with the ruling, they cannot file a suit to the court for the same dispute or apply for arbitration or reconsideration to arbitration organizations. Instead, they should automatically implement the ruling; otherwise the other party has the right to apply to the court for enforcement.

However, parties may apply to the court for a review and verification of the case and annulment of the arbitration ruling if they believe it is indeed wrong and conditions for a legal revocation have been met.

7.7 Mediation System

There are currently four types of mediation practices in China:

1. Civil mediation:
Mediation by People's Mediation Committees outside the court.
2. Judicial mediation:
Mediation by a court of law in civil and economic disputes and minor criminal cases inside the court. Mediation is not a necessary procedure. A court's mediation document is as valid as its verdict.
3. Administrative mediation:
This can be outside-the-court mediation by grassroots governments such as a township government in ordinary civil disputes, or outside-the-court mediation by government departments in compliance with legal provisions in specific civil disputes, economic disputes or labour disputes
4. Arbitration mediation:
Mediation by arbitration bodies in arbitration cases. Arbitration is called upon only if mediation fails to resolve the differences. This is also an outside-the-court mediation.

Article 91 of the Civil Procedure Law provides that a court of law should adjudicate in a timely fashion if mediation fails to produce an agreement or if one party retracts before the mediation document arrives.

7.8 Bankruptcy Law

The Law of the PRC on Enterprise Bankruptcy (New Bankruptcy Law, “EBL”) which took effect on 1 June 2007 has a widening of applicability. It is part of the country’s attempts to align with international best practice.

The old Bankruptcy Law applied only to state-owned enterprises (SOES), but the EBL comprehensively applies to all entities that hold legal person status, even with regard to financial institutions, such as commercial banks, insurance companies and securities companies.

The new concept of administrator was established in the EBL, which provides that the People’s Court is required to appoint an administrator upon acceptance of a bankruptcy petition. Personnel from relevant departments and agencies, such as a law firm, accounting firm or bankruptcy liquidation firm, can act as administrator.

The administrator must carry out its duties and report to the People’s Court, and is subject to monitoring and supervision by the creditors. The EBL empowers the administrator to review the creditor’s claim and the creditor’s meeting to verify the creditor’s claim.

In addition to allowing the appointment of an administrator to take control of a bankrupt entity’s affairs, the EBL has significantly broadened the role of creditors, by providing a mechanism for them to place debtor companies into bankruptcy or reorganization.

Moreover, the EBL provides for the establishment of a creditor’s committee. The creditor’s committee shall be appointed by the creditor’s meeting and shall consist of no more than nine members. The members are required to be approved by the People’s Court.

Under the EBL, secured creditors in relation to their secured assets shall be paid first, and employee claims and other welfare shall be paid from unsecured assets.

8. Czech Republic

8.1 Amicable

8.1.1 General

Most business relationships are regulated by Czech Commercial Code (Obchodní zákoník). Relations with consumers are subjected to a special regulation included in the Czech Civil Code (Obcansky zakonik). Average delay in payments of invoices in the Czech Republic is 48 days.

Interest rate should be specified in the contract between supplier and buyer. If it is not specified, the buyer can charge an interest rate on late payment based on the law. The interest rate is the same for all business relations and is prescribed by a special law. The annual amount of interest rate equals to the amount of repo rate determined by the Czech National Bank, plus seven percentage points. Amicable costs are not collected in Czech Republic because laws do not solve this matter not even in the court procedure.

In December 2010 it was 9%. The interests are always requested, both in amicable and in judicial phase. In a judicial proceeding the interest rate is based on the law, if it is not contracted by parties; courts always award the interest that is required on condition the basic claim is accepted.

From a cultural point of view, it is unfortunately rather difficult to get the total amounts of interests from debtor. Often, the interests are considered a matter of negotiation between debtors and collectors. Invoices become out of date according to law in B2B after 4 years and in B2C after 3 years since due date of invoice in Czech Republic.

8.1.2 Local agent

Atradius Collections Czech offers direct collection activity managed by a selected network of local agents, who visit the debtors all over the country in order to collect your money. According to our experience, this solution is particularly successful for specific debtor's categories like individual sole traders, shops and small companies. The local agents' network can also help investigate finding an untraceable debtor.

8.1.3 Lawyer

Atradius Collections assists you with a selected and professional network of the most experienced law firms in the judicial credit collection industry. Their network covers the Czech territory and manages legal actions in all Courts districts.

8.1.4 Costs

Costs for amicable collecting are specified in your collections contract.

8.2 Legal actions

8.2.1 General

Commonly, a reminder before court action is sent to the debtor before the court proceedings are started. If the claim is not covered fully even after this reminder, legal action is issued.

The contracting parties are allowed to negotiate an arbitration clause or a particular court's local competence clause. If these clauses are not agreed upon, legal actions are handled by the District Court of the debtor.

8.2.2 Jurisdiction

The fastest way is to ask the court for a payment warrant (platební rozkaz) which can be issued without a court hearing and can be executed on condition the debtor does not file a complaint. When the debtor files a complaint, however, the proceedings continue as a remedial action. In a case of a remedial action (zaloba na plneni), the petitioner asks the court to issue judgement. The court usually calls a hearing, which means the proceeding takes longer than that for a payment warrant. Both decisions, payment warrant and remedial action can be appealed against.

8.2.3 Arbitration

An easier form of a court proceeding is hearing in arbitration. Arbitration arises under the control of the participants on the basis of a written agreement in which the participants provide that their dispute will be resolved by a designated independent party with an arbitration clause.

This party could be either a freelance arbiter, any capable adult who is competent in legal matters, or arbiters of a permanent arbitration body. In the Czech Republic for example: Rozhodci soud pri Hospodarske komore CR a Agrarni komora. This alternative dispute resolution can be applied for civil property disputes only.

It is mainly intended for cases where payment transfers a right, the right of ownership for a purchase agreement, or an asset. It is typical for arbitrations that the decision of the arbiter or arbitration body (arbitration award) is final and is cannot be appealed against. There is limited period for going legal for invoices more than four years after due date for B2B and 3 years for B2C issues.

8.2.4 Required Documents

Imperative documents are usually Original Power of Attorney granted before a Public Notary and Apostil according to the Hague Convention, copies of unpaid invoices, current statement of account, transport documents signed by the buyer, export from business register.

These documents are required for supporting claims stemming from purchase contracts.

Optional documents are copies of credit notes, contracts, orders, order confirmations, contract of the debt's transfer if the debt is claimed on behalf of a third company who is not the original seller of the unpaid goods.

The particular documents required for legal actions are designated according to the type of claim and its characters.

It is helpful if the creditor has some security as acknowledgement of debt or bill. In the amicable way of collections we will certainly try to get some security from the debtor, which can be later helpful for legal action.

8.2.5 Power of Attorney

In the Czech Republic it is possible to have a general power of attorney for all kinds of legal actions. The proxy, such as all petitions, must be in the Czech language. AC can provide translations, but the original document with the signature needs to be in Czech.

8.2.6 Execution of a judgement or an arbitration award

Legitimate court judgements and arbitration awards unpaid by debtors can be executed by a court or by private executors in an execution proceeding. Execution proceedings comprise out of two parts. The first part takes place in a court that determines the question of formal execution and nominates a particular executor. The court always follows the suggestion of the entitled party in nominating any particular executor. Secondly, either a court or a nominated private executor carries out the real execution.

Enforcement of decisions imposing payment of a sum of money can be carried out by means of attachment of wages/salary and other income, compulsory debit, the sale of movable and immovable assets, the sale of a business, and the creation of a judicial lien on immovable property. These means are the same for both court execution proceedings and for the private executor.

In the case of a secured claim, a decision can be enforced by the sale of the security, through the sale of movable and immovable assets, bulk assets, groups of assets and residential or non-residential premises under ownership that have been given as security in accordance with specific legislation, or by compulsory debiting of a money claim given as security or by recovery against other property rights given as security.

Execution proceedings commence on the presentation of a motion. An execution can be ordered only on a motion by the entitled party or by anyone who can prove that the entitlement concerned passed over to or was transferred to him (§ 256(1) of the Code of Civil Procedure). The entitled party may lodge a motion for an execution warrant if the obligated party does not voluntarily comply with the requirement which the execution title imposes on him (see above for execution titles).

The execution proceedings end when all claims are fully paid, including all charges, partly paid, or for reason of tax reduction in case of negative end of execution proceedings.

8.2.7 Costs

Court fees account for 4% of the disputed amount, at least 600 CZK and a maximum 1 million Czech Koruna (approx. 35,000 EUR). In case the electronic application is used, or an electronic warrant payment, only half-fees (2% of the disputed amount)

are to be paid. The fee's base is the basic claim, but not including interests.

Arbitration fees are established by a special arbitration rule. An execution proceeding is free of charge.

Lawyer fees depend on the form of legal action and the amount of claims in dispute and vary from 2 to 15% of the claim.

The additional Court Clerk fees that can be added are fixed by the independent professionals whose intervention in any procedure is mandatory by law. These fees can differ for any proceeding. The additional Court taxes are added, and the amount is determined specifically for every case, depending on the kind of proceeding and the amount claimed. In general, the losing party is charged with all court fees, but only a minor share of the winning party's lawyers' fees will be reimbursed by the losing party, which is determined by the judge.

8.3 Insolvency

8.3.1 General

An Insolvency proceeding can start only following a proposal and it is always a court decision. In the first phase of insolvency proceedings, the court has to decide if debtor is insolvent. A debtor is insolvent when he has more than one creditor and unpaid invoices for more than 30 days after due day or when there are more creditors and the amount of debts is higher than its assets. In the second phase, a court settles which way to proceed: bankruptcy, reorganization or discharge from debts. This procedure usually takes several years.

8.3.2 Bankruptcy

The assets of debtor are used to discharge claims and the debtor closes his business. This procedure is accessible for both individuals and legal entities.

8.3.3 Reorganisation

A debtor can propose changes in his business, which will enable him to pay his debts and run his business. This means a prolongation of due date and can involve personnel changes. This procedure is accessible only to larger companies with more than 100 employees and total turnover over 100,000,000 CZK.

8.3.4 Discharge from debts

The debt amount is depressed to 30%. This proceeding is restricted to individuals without their own business.

The first way of proceeding is scheduling payments for up to 5 years, in this case the debtor's property is not sold. The second way affects selling the debtor's property. This procedure results in forfeiture of the debtor's all obligations.

Imperative documents:

- Copies of invoices
- Statements of account
- Special writ to be addressed to Mercantile Court, signed by the creditor

Optional documents:

- Cheques
- Promissory notes
- Bills of exchange, if any Simple retention of title clauses are valid in the Czech Republic.

The retention of title has to be stipulated in writing with the signing of the contract. Proceeds of sale clause may also be agreed upon, but its legal efficacy is not yet clearly defined under Czech law. In the Czech Republic, retention of title clause provides no protection in case of an acquisition in good faith by a third party.

In conformity with the applicable national provisions designated by private international law, the seller retains title to goods until they are fully paid for, if a retention of title clause has been agreed between the buyer and the seller, before delivery of the goods. This agreement should be formal and contemplate in public deed. Atradius Collections can provide you with full support with cases in status of insolvency.

8.3.5 Costs

The costs of insolvency proceedings are paid from debtor's assets. The court can assign a proposal to pay an advance payment for a maximum amount of 50.000 CZK (approx. 2100 EUR).

8.4 Type of companies

In the Czech Republic there are two large groups of subjects of law: private persons (individuals) and legal entities. A private person's liability is unlimited. Legal entities are mainly business companies. Business companies' liability could be according to the Czech law limited or unlimited (verejna obchodni spolecnost).

Companies with limited liability are capital companies -Ltd (Spolecnost s rucenim omezenym; s.r.o.), Inc (akciová spolecnost; a.s.) and a few other types like a state company of a syndicate.

9. Denmark

9.1 Amicable

An amicable solution is the fastest and cheapest solution for our customers. In case a debtor is not able to pay the full debt immediately, we try to make a payment arrangement with the debtor. In this way we save both time and costs.

In general, payment arrangements are established as written agreements (a special juridical document /Frivilligt Forlig) which provides us the basis for going directly to a Bailiff, in case a debtor does not fulfil his obligations according to the payment arrangement. We prefer to spend time on finding an amicable solution. However, if the debtor is not co-operative, we will start legal action immediately.

On the whole, we accept duration for payment arrangements of up to 10 months as this is the period most often granted to debtors by the Bailiff, but of course we try to shorten this period as much as possible.

9.2 Disputes

If a dispute is based on commercial grounds like delayed delivery or problems with goods, we act as an intermediate. We think that solving the problem out of court saves time and costs. Especially because our co-operating lawyers (external) charge hourly fees in cases like this.

Disputes based on juridical grounds like the understanding of documents, or general conditions of the trade sector, are usually handed over to our external lawyers. Nevertheless, we will always investigate whether an amicable settlement is possible before handing over the case to an external lawyer.

For disputed debts where we cannot find an amicable settlement, we have to obtain a judgement in order to continue collecting the debt. Depending on the nature of the dispute, this procedure can be quite lengthy and costly, as the lawyers will charge an hourly fee for their work.

9.3 Legal action

9.3.1 Debts below 50 000 DKK (approx. 6 700 EUR)

For debts below 50 000 DKK we can go directly to the Bailiff's Court. If the debt is undisputed, the Bailiff will issue a payment order, this equals a judgement. If possible, the Bailiff will try to secure the debt by taking any free asset belonging to debtor as security. We often see that the Bailiff grants debtor a payment arrangement with a duration of up to 10 months. If the debt is secured by real estate, this period can expand to 36 month.

This procedure is the cheapest way of legal action; the court costs would be only 300 or maximum 1200 DKK (40-160 EUR) plus lawyers' fees. It is also the quickest procedure, although it might take up to 6 -12 months on average.

If a debtor disputes the debt, no matter the reason or the seriousness of the dispute, the file is assigned for court handling.

9.3.2 Debts above 50.000 DKK (approx. 6.700 EUR)

In case of a debt of this size, our external lawyer has to file a claim form with the court. A judgement has to be obtained before enforcement proceedings can be carried out.

The cost for obtaining a judgement depends on the size of the debt: 750 DKK (approx. 100 EUR) + 1,2 % of the amount above 50.000 DKK (approx. 6.700 EUR) plus lawyers' fees. The timeframe is up to 6 months on average.

If a judgement is obtained and the debtor does not pay accordingly, the file will be handed over to the Bailiff's Court for further handling.

In total, the period from starting legal action to the end of enforcement proceedings at Bailiff's Court can easily grow to more than 12 months.

9.3.3 Enforcement proceedings

Enforcement proceedings are handled by a Bailiff's Court and can only take place based on a judgement or a written acknowledgement of the due debt from a debtor. The Bailiff will try to establish a payment arrangement with the debtor.

If not possible or if the debtor does not fulfil his obligations according to a payment arrangement established by the Bailiff, the Bailiff will investigate if the debtor has any free assets. If there are free assets available, they will be taken as a security for the debt and can be sold by creditor following specific rules.

The cost for enforcement proceedings depends on the size of the debt: 300 DKK (approx. 40 EUR) + 1/2 % of the amount above 3.000 DKK (approx. 400 EUR) plus lawyers' fees. The timeframe is up to 6 -12 months on average.

We sometimes see debtors trying to delay the process by not attending the meeting in Bailiff's Court. In such cases we have to wait until the police have traced the debtor and a new Bailiff's Court meeting is held.

9.3.4 Retention Of Title (ROT)

Retention of title is rarely used in Denmark. Although it might have been agreed between debtor and creditor, it is rarely enforceable in Denmark.

The background is that the goods in question have to be specified in detail, a general description of the goods is not sufficient. The goods have to be specified with individual numbers in order to be handled by a Retention of Title.

9.4 Insolvency Procedures

9.4.1 Enforced Dissolution

When a company does not provide financial reports in due time to public authorities

or does not comply with the legal regulations, the company can be taken into an Enforced Dissolution by the Central Business Register (a public authority). It will be investigated whether any assets are available.

If nothing is found which can be to the financial benefit of creditors, the company will be closed down. If assets are found or information is identified that needs further investigation, the company will go into bankruptcy. The receiver will handle further investigations and possible distribution of any dividend.

In the case of an Enforced Dissolution we will follow the debtor company until final closure and take action if needed to protect our customers' outstanding debts.

9.4.2 Reconstruction

When a company is not able to pay its debts as they fall, it might turn into a reconstruction.

An executor will be appointed and while a company is under reconstruction, the management will continue to manage the daily operation, but the trustee must accept comprehensive responsibility for operations. If the managers and the trustee cannot come to an agreement, the trustee can fire the management and take over the daily operation.

This can result in:

- A final enforced accord
- All the assets will be sold
- A file for the company's bankruptcy.

9.4.3 Bankruptcy

When a company does not pay a debt justified by an acknowledgement of debt or a judgement, a creditor can file a petition for bankruptcy.

The creditor is liable for the costs of the bankruptcy proceedings on the occasion that the free assets belonging to debtor do not cover this. When filing a petition for bankruptcy the creditor will be asked to provide security for the costs of the bankruptcy proceedings. The estimation of costs is based on the size of the bankrupt estate.

We will lodge the debt on behalf of the creditor and follow up on the bankruptcy proceedings until closure with or without dividend. That includes providing the receiver with further information, taking part in possible voting, decisions on behalf of creditor etc. If the creditor's involvement is needed, we will contact him.

Usually, bankruptcy proceedings are protracted in Denmark and can easily take between one to three years, or even longer, for large estates.

9.5 Interests

We always add interest to the debt when collecting debts on Danish debtors. There

are two alternatives:

To calculate interest rate as agreed between creditor and debtor.

To calculate interest rate according to Danish regulation based on the reference rate fixed by Central Bank of Denmark (+ 7 % p.a.). This rate is fixed twice a year per. 1st of January and 1st of July The second rule will always occur if the interest rate is not agreed between the creditor and the debtor.

9.6 Costs

9.6.1 Costs charged to debtor:

AC Denmark always adds collection costs to the debt and tries to collect them. These costs are calculated according to a tariff set up by the Danish authorities. If and when the debtor pays the costs, the amount will be repaid to our customer, partially or fully to cover costs mentioned below.

9.6.2 Costs charged to our customer:

These costs follow the tariff agreed with your local AC representative in the contract.

9.6.3 Receivables Expiring by Statute of Limitations:

According to this new law, all trade credits (invoice credits) from 2007 expire within 3 years and all trade credits before 2007 expire with in 5 years. Interruption of the expiring: by obtaining a judgement or a written acknowledgement of the due debt from a debtor.

9.7 Type of companies

Enkeltmandsvirksomhed: Sole proprietorship. One man business. Unlimited liability by the owner.

Interessentskab – I/S: General partnership. Partnership of individuals. Unlimited liability by partners /owners.

Anpartsselskab – ApS: Private limited company. Smaller limited company. Liability limited to the equity of the company.

Aktieselskab – A/S: Joint-stock company. Larger limited company. Liability limited to the equity of the company.

Kommanditselskab – K/S: Limited partnership

Andelsselskab – AmbA: Cooperative society. Partnership with limited liability

9.8 Legislation

Collection business in Denmark is governed by

Law number 319 of 14th May 1997

Ministerial order number 752 of 26th September 1997

Ministerial order number 741 of 4th September 2002 (interest rates)

Ministerial order number 601 of 12.7.2002 (collection costs charged to debtor) –
Law number 522 of 6th June 2007 (Receivables Expiring by Statute of Limitations)

10. France

10.1 Amicable phase

The recovery process always begins with a written reminder because of a legal tendency regarding the activity of recovering debts for third parties so that the debtor knows who the creditor is and who the collection agency is. Our collectors then start collection efforts in order to identify the origin of the debt and to find a solution with the debtor to pay the whole debt.

Sometimes, AC France decides to entrust the file to a local agent, who visits the debtor in order to put a strong pressure on him to obtain the settlement of the debt or to provide the necessary information about his solvency. The local agent's network can also investigate in place in order to search an untraceable debtor. In case of an unsuccessful search, we could also ask a specific agency to find the new address of the debtor.

10.1.1 Dispute

In many cases, the debtor tries to avoid payment stating that there is a technical dispute or a commercial one. AC is very pragmatic in the way of handling that kind of files. First, we try to clarify the problem by requesting evidence of the debtor, by asking comments to the customer and once we have all the elements of the dispute, we try to find an amicable solution.

If we consider that the dispute is unfounded, the collection process continues. If it is a partial founded dispute, we ask the debtor to pay the undisputed part of the debt in order to make a goodwill gesture and we try to find an agreement for the balance, provided that the customer is ready to accept a deal. When no deal is possible, we will usually decide to start a legal procedure.

10.1.2 LDC

AC France has selected the most experienced law firms and attorneys in the judicial credit collection field to work with. This vast network covers all the territory and can manage the legal procedures in all Courts districts.

10.1.3 Other actions

AC France will evaluate the solvency of a debtor and his capacity to pay a debt. Some extra services can be provided by specific firms, such as bank account research, real estate research and officially booked goods research. These elements can help to create a clear view of the financial situation of the debtor and to assists in finding the most efficient way to collect the money.

10.1.4 Interests

We always charge the debtor with the calculation of interests for the legal interest

rate. This rate is different each year and defined by the government, multiplied by 3.5 in accordance with the French law on the terms of payment.

AC France adds a fixed cost of 40€ per case in accordance with the European directive and a penalty clause of 10% for the recovery's costs.

10.2 Legal phase

The main goals of a legal action are to determine the existence and the amount of the debt, to define the relationships between the creditor and the debtor and to finally decide if the outstanding amount is due and if the debtor must pay it immediately or with a payment plan.

We always need to obtain a judgement before acting by enforcement.
Legal actions (type and costs)

There are the 3 ways to obtain a judicial decision:

10.2.1 Injonction de Payer

It allows AC France to obtain an injunction against the debtor without the presence of the debtor in the Court. The judge decides to condemn the debtor after analysing the documents that are produced (invoices, purchase orders, delivery notes, unpaid cheque, etc.). After this, the injunction is notified to the debtor by a bailiff.

The debtor has a month from the notification of the decision by a bailiff to accept this decision or to dispute it. If he decides to accept it, then he has to pay. If he decides to dispute it, then the judge planned a hearing to analyse the reasons why the debtor refuses to pay. In this case, the debtor and AC France need to be represented in the Court.

This type of procedure is used when the amount of the debt is not too high and when the debt is not disputed. Otherwise, the judge prefers to have the creditor and the debtor in front of him to sort things out. It is a very simple and quick procedure where AC does not need to entrust a lawyer, except when the debtor disputes after the bailiff notification. It is an inexpensive procedure.

10.2.2 Refere provision

This is an emergency procedure where the creditor has to deliver convocation to the debtor for a hearing in front of the judge. The debt should not be disputed the paper file complete with the evidence of the debt and the creditor has to argue about the emergency, often because the recovery is compromised because of the risk of insolvency. In many cases, the debtor is not present and the judge pronounces a judgement during the first hearing.

If the debtor is present and if he disputes, then the judge decides to close the case and ask the creditor to start the common procedure called 'assignation au fond'. It is also a very fast procedure but we need to entrust a lawyer to represent the creditor in the Court.

10.2.3 Assignment au fond

It is the common procedure to obtain a judgement when the creditor and the debtor do not want to find an amicable solution. Both should be represented by a lawyer and it is often a very long procedure with a lot of hearings. It is also an expensive procedure in which an expert might be necessary especially in case of a technical litigation.

10.2.4 Power of attorney

AC France needs to have a specific power of attorney for each case where a legal action has to be started. The proxy must be in French, signed by the legal representative of the creditor and must mention the name of the debtor.

10.2.5 Execution of judgement

After the judgement is notified to the debtor, the latter has one month to appeal. After this period, the judgement becomes 'executive', which means that the bailiff can start a forced execution. In France, only bailiffs have the authority to handle the enforcement of a judicial decision.

At this stage, the debtor has no choice. He either has to pay or go bankrupt.

10.3 Collection costs

There are two kinds of recovery costs.

First the rechargeable costs the debtor has to pay, which are often liquidated by the judge. In most cases, costs derived from the judicial procedure and the notification's costs.

Second those costs that could not be recharged to the debtor, essentially the lawyers' fees. Each party has to bear its own lawyer fees, but the winning party could ask the judge to obtain an indemnity to compensate its expenses. In practice, the amount approved by the Court constitutes only a minor share of the expenses. This indemnity is charged to the debtor.

10.3.1 Expected time frame

A non-complex commercial case will take approximately eight to ten months to be solved. This period can be doubled in case of complex commercial or technical dispute or in case of appeal.

This estimation can be slightly increased for some jurisdictions where the judicial system has been rated below the average performance of the country.

10.4 Miscellaneous information / insolvency procedures

The legal definition of the insolvency is that the debtor is not able to face up his due debts considering his available assets.

The two main procedures are:

- Receivership, which allows saving the debtor's activity thanks to a continuation plan, wherein creditors can expect dividends.
- Bankruptcy which means the liquidation of the assets when the situation is totally compromised and creditors can not expect dividends. The delay to lodge the claim is 2 months for French creditors and 4 months for foreign ones from the date of publication in BODACC (official journal).

The duration could be important as it is mandatory to check the debt of all the creditors who lodged the claim, before making proposition of plan of payment (in general in 10 years by annual payment).

It could also happen that the debt is disputed and a convocation from the Court is planned to justify the debt.

Another point is that a receivership can be converted in bankruptcy. Indeed, almost 90% of the receiverships ended by a bankruptcy

11. Germany

11.1 Amicable Phase

11.1.1 Interests

Atradius Collections Germany always charges interest to debtors calculated from the base rate set by the German national bank plus 8 % on a daily basis (see European Directive 2000/35/CEE Article 3 Section 1d in conjunction with paragraph 288 section 2 German Civil Code).

In case a creditor has to pay higher interests to his bank we are able to ask for the higher rate but this higher rate needs to be confirmed by the bank in case legal actions should be initiated.

From a cultural point of view, German debtors are used to paying late payment interests, though often the actual amount of the interest payment is considered a matter of negotiation between debtors and collectors.

11.1.2 Debt collection costs

In Germany debt collection costs are charged to debtors, calculated on the basis of the RVG (Rechtsanwaltsvergütungsgesetz), the statutory lawyers' fees. If the debtor is not paying amicably and therefore legal procedures are initiated, or in the course of the lawsuit, the collection costs will be enforced on the debtor.

Nowadays approximately 60 % of the German courts award this additional claim, but this used to be a matter of dispute.

AC Germany forwards all recovered debt collection costs to our client to reduce the claim, or retains the costs instead or adds them to the success fees. This depends fully on the contractual agreement between the client and AC, the Debt Collection Agreement.

If it has been agreed that AC Germany retains all collection cost then, in line with § 367 BGB (German Civil Code), any payment from the debtor is first allocated to the collection costs, then to the interest and finally to the principal amount outstanding. For the time being, because of legal reasons, this allocation method can only be offered to German clients.

11.1.3 Prescription

The general prescription period in Germany is 3 years starting at the end of the year the claim became due according section 195 BGB (Germany civil law) in combination with section 199 I BGB.

Transport claims prescribe within 1 year starting from the delivery.

11.1.4 Accepted Payment Methods

The most common payment methods are bank transfer and cheque payment.

AC also accepts drafts, but these are very rare in Germany and Austria. We do not offer the direct booking off from debtor accounts.

11.1.5 Dispute

We are always trying to reach an amicable solution between creditor and debtor. To accomplish this, we always require all underlying contractual documents (e.g. signed contracts, orders, order confirmations, invoices and delivery notes as well as all standard terms that have been agreed upon).

We will always carry out an examination and analysis of the case in-house, supported by our legal team.

11.1.6 Investigating the financial situation

In Germany we contract very experienced reporting agencies to assess the financial situation of debtors, most often including real estate and other enforceable assets. In combination with our own phone contacts, we get an accurate impression of a debtor's financial situation and we are able to advise on the next step.

11.1.7 Public registers

It depends on the legal form of the debtor, whether we are also able to request information from public registers. All traders have to be registered at the municipal trade office.

Information from this office triggers an administrative fee which may vary from town to town. It is usually between 15 and 30 EUR. All companies with a limited liability have to register with the trade register at a competent court, which can be accessed online at a flat fee of 4.50 EUR.

We have direct access and can obtain additional information on shareholders, historic developments and balance sheets, which are often published there. In Germany, a private company with unlimited liabilities can be compared to private person. A debtor with address unknown can be traced via the Registration of Address office.

Private persons are legally obliged to officially un-register when moving out of one town and to re-register in the other town they are moving to. Failing to do so is punishable, but some debtors do not follow this procedure and vanish untraceably. The cost of the information from the Registration of Address office may vary from town to town but is usually between 8 and 20 EUR.

11.1.8 Private investigator

In order to trace a non-registered debtor and / or in case of potential fraud, it is advisable to engage a private investigator. We co-operate with an experienced agency and are able to offer a basic report for between 39.50 EUR and 80 EUR.

11.1.9 Securing the debt

To reclaim the outstanding amount as quickly as possible, we usually do not accept payment plans beyond six months. Occasionally, when a debtor is willing to pay but based on his financial situation, is unable to comply with a six-month deadline, we are prepared to accept a longer running payment plan.

However, then we request from the debtor to secure the debt in favour of our client. This can be done both amicably and cost efficiently, by providing an acknowledgement of debt, authenticated by a notary and immediately enforceable in case the agreed payment terms are not honoured.

Corresponding notary costs have to be carried by the debtor, the notary will send the enforceable engrossment directly to us. In exceptional cases, the cost of obtaining such a title is advanced by us, e. g. if the debtor is not capable of doing so. Costs are then recharged to the client; nevertheless, an approach like this has to be evaluated on a single case basis and always depends on the outstanding principal amount.

11.2 Retention of Title

Germany has very comprehensive and supplier-favourable regulations on Retention of Title. To use these to the advantage of any supplier, they must be agreed upon explicitly prior to delivery. Most important is that the debtor acknowledges the retention of title before receiving the first invoice.

Most companies include Retention of Title provisions (ROT) in their general trading conditions. In this case the later debtor can either sign these conditions in advance, or our client has to advise the debtor explicitly that the general trading conditions apply before sending the first invoice, e. g. with a note on the order confirmation. It is of utmost importance to have proof that the trading conditions have been agreed to; otherwise the benefits of the more complex version of the German retention of title cannot be used for reducing the outstanding amount.

There are three different kinds of Retention of Title:

- Basic ROT* The goods supplied remain the legal property of the supplier; until full payment. The supplier can/must get the goods back.
- Increased ROT Open account retention. In the course of ongoing business relations, the supplied goods remain the legal property of the supplier until all outstanding amounts from the open account or business relations have been paid fully.

Overall retention If an open account relationship exists, the retention remains in force even after transfer into the open account or after the balancing of accounts.

- Extended ROT* Assigned to the supplier in advance. Please note: In accordance with §354 a of the Commercial Code an advance assignment is effective despite a non-assignment agreement between the purchaser and third parties.

11.3 Legal Procedures

11.3.1 Legal dunning procedure

This procedure is only applicable for money debts. For non-German clients seeking payment from a German debtor, the competent county court is Berlin-Wedding. For German/German cases there are various competent local courts, applying an automatic procedure exclusively.

The client seeks the court order (Mahnbescheid) which needs to be served to the debtor after it has been raised. In standard cases (e. g. debtor does not need to be traced) this will take two to four weeks. Upon receipt, the debtor can appeal within two weeks (Widerspruch).

This transfers the case out of the legal dunning procedure into a legal procedure before the competent court, where a standard civil litigation commences. If no appeal is raised in time, the creditor may request an enforcement order (Vollstreckungsbescheid) which will be issued within two to four weeks and will also need to be validly served to the debtor.

Again, the debtor may file an objection within two weeks (Einspruch). In this case the legal dunning procedure ends and the case is transferred to the competent court for standard civil litigation.

Only if the debtor does not file an objection does the enforcement order becomes a final and enforceable verdict, to be enforced by a bailiff.

Please note that only the enforcement order can be notified publicly. For any case where the debtor is untraceable from the beginning, the legal dunning procedure is not the appropriate action. A standard civil lawsuit would then be adequate, consequently a public service of writ.

The average duration of a legal dunning process is between 8 and 12 weeks, whereas a court procedure can take up to 12 months. The costs of the legal dunning procedure are only 20% to 40% than that of a full court procedure. Efforts to be taken are much lower, at least when the debtor simply does not react and so implicitly accepting the claims.

The costs of the legal dunning procedure relates to the principal amount outstanding. So there is always a range of legal costs. They can be named on request.

11.3.2 Civil Lawsuit

You can start a civil lawsuit immediately after the debtor's protest/objection in the course of the legal dunning procedure.

The competent court is determined by the amount outstanding: up to 5.000 EUR local courts (Amtsgerichte), beyond the district courts (Landgerichte).

The local competence can be agreed in advance, regularly this is stated in the terms and conditions of the delivery. If no valid agreement has been made, the safest way is to sue at the competent court at the company seat of the debtor.

The legal procedure commences with the service of the writ to the debtor, issued by the competent court after which the court fees are advanced by the plaintiff. The writ is served to the debtor and deadlines for the defence plea are set out. The competent court can set up a written procedure with short deadlines of two to four weeks for pleading.

In this written procedure, the court can issue a judgement by default, if the debtor misses deadlines. Against this default judgement the debtor can file an objection within two weeks after the judgement by default has been served.

If no judgement by default applies the court sets up a first hearing. The parties are invited to this and often it is necessary to appear before court to avoid legal disadvantages. Nowadays, this first hearing is a conciliation hearing, but the judge in general invites also witnesses, if available and mentioned in the pleadings.

If settlement cannot be reached, the parties and witnesses are being heard. If expert evidence is necessary, the court will request such expertise. The costs are quite high, depending on the complexity of the technical aspects of the case.

Sometimes a second hearing is required, after which the judgement is given, including the decision about the cost burden. In general, all costs, including those of the prevailing party, have to be borne by the defeated party.

The latter is entitled to file an appeal against the judgement (threshold is 600 EUR), triggering a verdict by the court on the next level. (local court to district court; district court to higher regional court). In any second instance, the review will be restricted to a check whether or not statutes were applied correctly; any amendment of facts and proof is not possible.

The plaintiff does not require representation by a registered attorney, before a local court, although in front of any other court, professional legal representation is mandatory.

Costs of the civil law procedure (court costs and lawyer's fees) are determined by the provisions of the RVG (Rechtsanwaltsvergütungsgesetz) and the GKG (Gerichtskostengesetz) and not subject to any negotiation. Any first instance takes between 6 and 12 months, depending on the complexity of the case. The outcome of such a procedure is an enforceable judgement.

The costs of the civil lawsuit also relate to the principal amount outstanding. There are different fees which can apply during a procedure, so there is not only a range regarding the amount outstanding but also a range regarding the possible fees. This makes it difficult to predict the total costs. In addition to this, costs for witnesses and/or experts might also arise.

11.3.3 Proceedings restricted to documentary evidence (Urkundsverfahren)

This procedure can be initiated by either a legal dunning or court procedure. Key to the success of this procedure is an original document that in itself can prove the debtor's obligation towards the client, e.g. an acknowledgement of debt, a payment plan, a settlement, a check or a bill of exchange.

The hearing will be scheduled at shorter notice than in the standard legal procedure, normally within two to four weeks. The judge only checks whether the plaintiff's claim results from the original document provided (copies are not accepted). Any objection can only be based on the invalidity of the document, not any fault of the underlying business transaction. If successful, the court will give a provisional judgement, which can be executed.

The debtor can file an objection within two weeks after service of process, which will bring the procedure into the so called post-procedure (Nachverfahren). This is the normal civil litigation where the debtor can bring forward objections against the claim itself, i.e. the underlying business transaction (e.g. bad quality of goods). If the debtor should fails here, by e.g. granting signed checks to the creditor, the debtor already acknowledges the debt. He has to concur the prima facie evidence.

This process should be chosen if evidence of the claim can be given by a conclusive original document as this procedure is much quicker than the legal standard procedure.

11.3.4 Arrest (in personam or in rem)

This procedure is an alternative if the circumstances call for immediate action, e.g. if the debtor intends to leave the country. The procedure is rather complex and the requirements and standards to prove the factual details are high. This procedure is rarely used, but may sometimes be an option.

11.3.5 Criminal complaint

Such a complaint to the criminal law authorities in case of actual fraud or delay in filing for insolvency etc. is not in itself a means of successful collection. However, it may stimulate the debtor to reconsider a payment to the creditor. This is a rarely used means with an uncertain outcome and costs approx. 250 EUR.

11.4 Enforcement

Judgements can be enforced in collection business mainly in 3 ways

- Enforcement in debts
- Enforcement in movable goods
- Enforcement in immovable goods. The enforcement is exclusively started by bailiffs and generally requires the participation of a judge.

Conditions for a valid execution are:

- The judgement
- The clause of enforcement on the judgement (permission to execute)
- The delivery of the enforceable judgement to the debtor

11.4.1 Enforcement in debts

The creditor can block the bank account of the debtor or block the debtor's claims against tax offices, life insurances, the debtor's employer, and shares in a business, corporate shares, or any possible claim the debtor may have against any third party. This usually proves very effective and often surprises the debtor.

This is a swift enforcement methodology, it usually takes only four to eight weeks, obviously it requires specific information like bank account details, name and address of the employer, information about corporate shares or shares in business.

11.4.2 Enforcement in movable goods

This is the standard procedure where the bailiff visits the debtor trying to take away movable goods he can liquidate in favour of the creditor. The bailiff cannot seize goods necessary for the debtor's basic daily life or for enabling him to maintain his business activity.

If such goods are not available, the bailiff will demand a statutory declaration from the debtor. If he refuses this and does not appear before the bailiff for the appointment set up for the affidavit, the creditor needs to file for an arrest warrant before court.

This warrant is executed by the bailiff, supported by the police. The warrant is used to obtain the statutory declaration from the debtor and can only be obtained every three years. This is a relatively slow procedure six to nine months in the western parts of Germany and nine to twelve months in the eastern parts of Germany, which is due to a lack of bailiffs and significant backlog.

11.4.3 Enforcement in immovable goods

If the debtor owns real estate, it is possible to receive a recording of the claim in the land register and to then force the sale of the real estate by court order. This process is more expensive than the others and requires a lot of patience as it takes time to get the recording and afterwards have the land or real estate up for sale and sold.

11.5 Insolvency Proceedings and Pool of Creditors

11.5.1 General facts

Whereas the enforcement described in Section 9.3 is enforcement for only one creditor, the insolvency proceeding is a kind of a collective enforcement for all creditors of one debtor. With the start of the preliminary proceeding, all individual enforcements are suspended. Only when the insolvency proceeding will not be started, individual enforcements will be continued.

The aim of the insolvency proceeding is to pay out all creditors with the same quota by liquidating the assets of a debtor company or collecting the enforceable income of an individual who is declared bankrupt. After the debtor or a creditor files for insolvency of the debtor, a preliminary liquidator is appointed to check if sufficient assets are available to cover the costs of the proceedings (court costs and costs of the liquidator).

If these costs are deemed to be covered, the insolvency proceedings start and a liquidator will be appointed, usually this is the preliminary liquidator. Any other way,

the court will reject the declaration of bankruptcy due to insufficient assets.

The creditors can then lodge their claim and take back any goods delivered under retention of title. For goods on stock, the liquidator can choose whether to pay the original price to the creditor or to return the goods.

For the extended retention of title, the insolvency practitioner liquidates the goods or claims and pays out these creditors retaining VAT and a commission of 9% of the revenues.

After the proceeding starts, a claim-lodge is possible within a given deadline. All claims lodged are checked before the first hearing, usually within three months after the start of the proceeding. If the claim-lodge is done after the deadline, the claim cannot be checked before the first hearing and a second hearing close to the end of the proceeding (in general after two to four years) has to be announced. For these late lodges additional costs of 15 EUR arise and the confirmation of the debt will be delayed.

The liquidator can either accept the lodged debt or dispute it. If the claim is disputed, the creditor may only file a claim in court to prove the justification of his claim, if further documentation etc. does not convince the liquidator into confirming the debt. At the end of the proceeding all creditors with confirmed debts will receive a dividend, on average between 5% and 8% of the original claim. In less than 50% of the proceedings a dividend higher than 2% is distributed.

The duration of an insolvency procedure is between 4 and 7 years. In Germany the case will be closed after the Insolvency Practitioner has accepted the claim, which has been lodged.

The check for the claim lodge takes place 1-3 months after the deadline for the claim lodge.

The deadline to lodge claims is also 1-3 months related to the complexity of the procedure and starts from the adjunction order (Insolvenzeröffnungsbeschluss).

If there are any dividends later on the insolvency Practitioner will always turn to AC or the client provide this information. The costs for lodging and monitoring of a debt relates first of all to the agreements in the respective Debt Collection Agreement between AC and the client. Next to this and if the lodging of the debt is proceeding via a lawyer, a further lump sum of 150 EUR will be charged. In case the Pool procedure is managed by the lawyer additional 50 EUR will be charged.

11.5.2 Limited companies

Limited companies like GmbH, AG, GmbH & Co. KG (and unlimited companies whose owners are limited companies) are obliged to file for insolvency for mainly three reasons.

The first one is inability to pay, which does not automatically mean that buyer's assets do not cover all debts.

Under special circumstances with a bad liquidity management this could be the case that only the actual liquidity does not cover the due debts but in general the company's expected liquidity would.

The second reason is expected inability to pay which means that the management

already know that within a certain time span the company will be unable to pay the due debts.

The third reason is accounting insolvency, which means that buyer's assets do not cover the debts.

11.5.3 Unlimited companies/individuals

For unlimited companies or individual debtors, it is not obligatory to declare bankruptcy. Nevertheless, they can declare bankruptcy for the reason of inability to pay or the expected inability to pay.

Costs for the proceeding will be covered by the assets, or the liable persons may request for a respite of the costs. If the insolvency proceeding is confirmed, the debtor has the right to claim the annulations of all pending debts after a period of six years. During this period all enforceable incomes have to be paid to the appointed liquidator who will distribute funds to all creditors on a pro rata basis.

11.5.4 Pool of creditors

If a bigger company goes bankrupt, the actual insolvency proceeding can be accompanied by a second proceeding called pool of creditors. In this case the creditors join in a pool agreement usually founded by the credit insurance companies or banks. The aim of the pool is to accumulate all claims of creditors who delivered goods under the retention of title clause.

The creditors have to proof that the retention of title was agreed. They then transfer their rights to the pool arrangement and participate in the refunds from the sale of all secured goods with a quota of their confirmed credit.

11.5.5 Rescission

The liquidator can dispute payments by the debtor carried out within three months prior to the declaration of bankruptcy. A longer period is possible for some special forms of payment. If the liquidator disputes these payments, the creditor has to refund them and can only lodge the corresponding debt instead.

12. Greece

12.1 Amicable Phase / General information

12.1.1 Interest

Contractual interests can be charged to the debtor. If no contractual agreement was made we generally apply an interest of 8.75 % p.a. in accordance with the European Directive 2000/35/CEE which has become Greek law by Presidential Decree.

12.1.2 Collection costs

Amicable collection costs can only be asked if these were contractually agreed between creditor and debtor.

12.1.3 Prescription

The prescription period for commercial invoices lasts 5 years starting at the end of the civil year the claim became due.

For cheques, bills of exchange and promissory letters the limit are 3 years.

(It is to be noted that the court will not issue a payment order if a period of 6 months has elapsed from the date a cheque was presented to the bank unless the debtor has recognised the debt in writing either before or after presentation of the cheque, or if the cheque refers to a contract signed by the debtor.)

12.1.4 Payment Methods

The most common payment method in Greece is payment by cheque. In case of international cheque payments this may result in additional bank charges for the creditor. Therefore we advise to agree beforehand which party is going to bear these costs.

In order to secure cheque payments Greece has a special legal cheque procedure. For further information please go to the topic of legal procedures.

12.1.5 Disputes

We always try to reach an amicable solution between creditor and debtor. To accomplish this, we always require all available contractual documents (e.g. signed contracts, orders, order confirmations, invoices and delivery notes as well as all standard terms that have been agreed upon).

We will always carry out an examination and analysis of the case in-house, supported by our legal team.

12.1.6 Retention of Title

The retention of title has to be contractually agreed to the effect that the ownership of the seller remains until full payment of the price.

In these cases the seller is entitled to claim payment of the price or to rescind the contract through the assertion of his retention of title. The bankruptcy of the buyer will not influence creditor's right of ownership.

12.1.7 Types of companies (most frequent)

A.E.: (Joint stock company)

Shareholders are not liable above the amount of their shares

E.P.E.: Limited liability company

Responsibility of the associates limited to their capital in the company

O.E.: In collective name

Personal & joint responsibility of the associates is limited

E.E.: Limited partnership

Where the personally liable associates are jointly responsible without limitation

Individual firms are also still very frequent: director is personally liable.

12.1.8 Amicable Agents

We have several attorneys and debt collection partners acting for us on the Greek territory and collecting our claims out of Court or in Court.

Personal visits to the debtor can be organised in the area of Athens and Thessaloniki for significant outstandings.

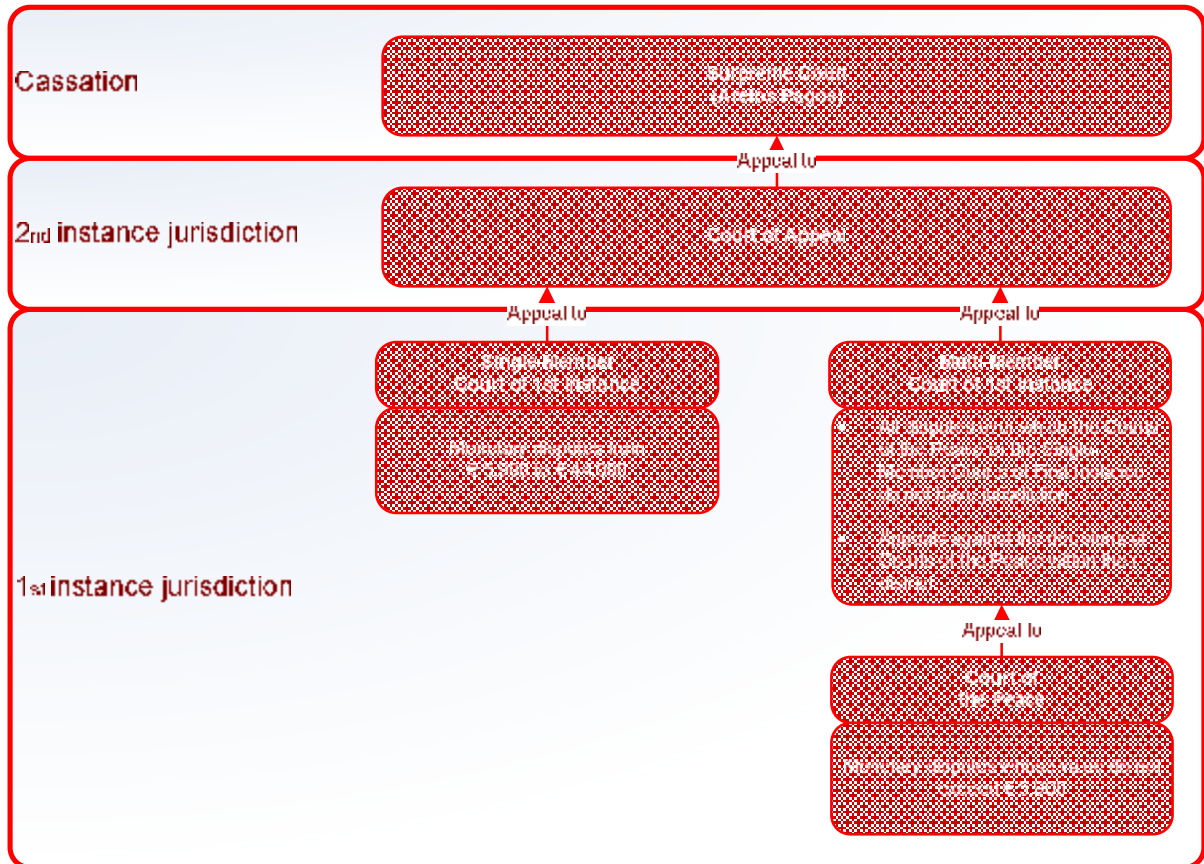
All our attorneys / agents in Greece are in a position to check debtor's solvency examining in particular the Court Registries, the Land Registry and the Registry of Mortgages for a fee amounting to €150.

Our correspondents are always trying to get immediate post-dated cheques which represent a strong guarantee for the payment because in case of non-payment a public body is notified and the person or company having issued the unpaid cheque is registered with the body.

On the other hand, an unpaid cheque is an important instrument to get access to the simplified Payment Order procedure.

12.2 Legal

12.2.1 Judicial Organisation



12.2.2 Payment order

This procedure is accessible to creditors who are in a position to prove the existence of their claim by public or private documents.

In case of bounced cheques

If these have been timely presented to the bank for payment (within 8 days as from the date of issue/payment)

The payment order can be requested within six (6) months as from the date the bank confirmed that there are no funds in the account. The Court Payment Order must be issued and served to the debtor **within** the six month period.

Criminal charges against the person who issued the cheques can be filed **within** three (3) months as from the date the bank confirmed that there are no funds in the account.

In order to start the procedure of payment order the creditor files his request with either the Court of 1st Instance or with the Justice of Peace according to the amounts claimed.

After examination of the documents the Court being of the opinion that the debt is legally due for payment will issue a Payment Order within 50/60 days (more or less depending on the workload) which is immediately enforceable if the debtor does not oppose.

The debtor has 15 days after notification of the Payment Order to file his objection. In case of objection the proceeding will be transferred into the ordinary legal procedure.

Documents needed:

- Notarised Acknowledgement of Debt
- or - private acknowledgement of debt with tax stamps
- or - original bill of exchange, promissory letter, bounced cheque
- or - copy invoice and proof of delivery, possibly in original, signed by the debtor on receipt of the goods, or any document from the debtor or transporters proving receipt of the goods (e.g. sale ex-works)

Power of Attorney:

In general, no POA is needed unless the opponent disputes the attorney's authority to act on behalf of the creditor.

Costs:

Court costs (disputed cases not included): 1/1000 of the claim for judicial stamp and limited additional costs for the Bar Association and for serving the legal document to the opponent: from 250 EUR to 700 EUR +and a maximum of 850 EUR for execution irrespective of claim amount

Lawyer's fees: depending on the agreements with the lawyers. We have agreed particularly advantageous rates with some lawyers.

Recoverability of the costs and fees:

The recoverability of these costs and fees on the debtor is left to Court's discretion.

In theory court costs or part of them can be charged to the debtor but it occurs only rarely.

12.2.3 Ordinary Procedure

If sufficient documentation as described above cannot be provided, a creditor's witness should always be available and prepared to go to and testify in court. The civil proceedings start with filing a writ with the court indicating full identity of the parties, details and legal basis of the claim. The court fixes a first hearing date and the debtor is served a summons by a bailiff.

Attempt for conciliation

The party filing a lawsuit is obliged to invite the opponent to negotiate an out of court settlement. The lawyers of the parties will meet at least 35 days prior to any hearing.

Procedure at Court of Peace or Court of 1st Instance with one Judge:

The further procedure is somewhat simplified. The parties have to produce their means of defence and their documents before the date of the hearing which takes place orally.

Each party has to name a witness and has 3 days to make oppositions to submissions and evidences after the Hearing which can take place several months after filing the Writ.

Before the Court of 1st Instance with 3 Judges:

The writ will be served to the debtor at least 60 days prior to the 1st hearing. The 1st hearing may need several months to be appointed.

Any objections to the submissions to court can only be made until 15 days prior the scheduled hearing. It is important to know that the hearing can only be postponed once.

Four days after the hearing all parties will get a written protocol of the hearing and will have another four days to evaluate the testimony of the witnesses in order to finalise their defence. It has to be noted that additional evidence can no longer be introduced to the procedure at this stage.

Documents needed & Power of Attorney:

By request a power of notarised attorney with the stamp of the creditor company and an apostil of the Hague Convention

All available documents like copy of invoices, orders, transport documents, correspondence.

Costs:

Court costs and lawyer's fees before the Justice of Peace and the Court of 1st instance with 1 judge (disputed cases not included) - : see Payment Order

Court costs & lawyer's fees before the Court of 1st instance with 3 judges, disputed cases not included : see Payment Order + additional cost of some 800 EUR / 1000 EUR.

Recoverability of the costs and fees:

The recoverability of these costs and fees on the debtor is left to Court's discretion. In theory court costs or part of them can be charged to the debtor but it occurs only rarely.

Time frame for any appeal: 30 days after issuing of the judgement

12.3 Enforcement

Any enforcement action to seize assets will need at least 40 to 60 days (sometimes longer). Any movable assets will be auctioned publicly around two month after seizure. The auctioning of real estate however takes much longer and will need to be evaluated case by case.

Concrete results in execution proceedings are far from being satisfactory in Greece.

12.4 Insolvency proceedings

12.4.1 Code of Insolvency as amended by Law 3588/2007

This new Insolvency Code replaces all previous laws, which are explained here after as there are transitory provisions for the ongoing insolvency cases started before introduction of the New Code in 2007. Those cases are still governed by the previous Insolvency Laws.

The new Regulation particularly aims at continuation and reorganisation of the companies, counterbalance between liquidation of the assets and reorganisation of the debtor company, equal treatment of the creditors and prevention of the insolvency.

Basic points of the new regulation

- Changes in the procedure and conditions of filing an application of insolvency in order to make the filing of an insolvency petition as a sole means of putting pressure on the debtor more difficult.
- Procedure of Negotiation: this is the introduction of a common system of liquidation and reorganisation, both occurring under the procedure of Insolvency. As a pre-stadium of a possible reorganisation, a procedure of negotiation is introduced between creditors and debtor.
- Setting up a Plan of Reorganisation which includes all financial information, suggested means to satisfy creditors and a plan for the recovery of the company. The minimum percentage for the satisfaction of the ordinary creditors is 20%. The Plan is examined by the court within 20 days from its submission. The creditors decide about the acceptance of the plan with a majority of 60% of the claims. In this amount a percentage of 40% representing the privileged claims must be included.

12.4.2 Bankruptcy

The lodging of claims in the insolvency procedure is done by our local lawyers as the procedure is quite complex in Greece and all lodgings have to be made in Greek.

Documents/Information required from the petitioning creditor

- Copies of invoices signed by the creditor and authenticated by a Notary Public certifying the signature and confirming that the copy is a true copy of the original remaining unpaid according to company's official books. The document should bear the Apostil of the Hague Convention. However a certified copy of the invoice is not required if the buyer has accepted a bill of exchange or signed a promissory letter duly stamped.
- Furthermore a witness of the creditor might need to testify before the Court.
- Power of Attorney notarised and stamped with the Apostil of the Hague Convention.

12.4.3 Judicial Recovery/composition (law 1892/90)

This procedure takes place in case the debtor company is deeply indebted but can be recovered.

It only takes place if creditors representing a minimum of 60% of the total amount of the company's debts (including 40% of the secured creditors) have agreed to reduce the amount of their claims as well as on how the balance will be paid.

The Agreement has to be ratified by the Court. A special trustee can be appointed to negotiate with creditors

No legal action can be taken and pending actions will be frozen

If the debtor is already in bankruptcy, the state of bankruptcy will be recalled as from the date the petition for ratification of the settlement agreement is submitted to the Court.

Documents/Information required from the petitioning creditor

- Power of attorney notarized and stamped with the Apostil of the Hague Convention

12.4.4 Special liquidation (law 1876/90)

This procedure takes place in case the debtor company is deeply indebted, all activities are suspended and a bankruptcy or liquidation procedure is running.

Furthermore the outstanding debts have to surpass the capital by five times. Basic assets will not be sold in public auction.

12.4.4.1 1st type of special liquidation

Creditors representing 20% of company's debts have to apply to the Court for placing the company under special liquidation.

A liquidator is appointed for a period of 6 months (possible extension by another 3 months). He will administer the company and try to sell it as a whole or the assets separately.

Any legal action and enforcements cannot be initiated or are suspended as from the date of appointment of the liquidator who can always negotiate a judicial composition.

12.4.4.2 2nd type of special liquidation

Creditors representing a minimum of 51% of company's debts have to apply to the Court for placing the company under this type of special liquidation.

A liquidator is appointed for 6 months (possible extension by another 3 months). He will administer the company and try to sell it as a whole through public bidding so that it can continue its activities. If it is not possible, the company's assets will be sold separately.

Any legal action and enforcements cannot be initiated or are suspended as from the date the petition is submitted to the court. The liquidator can always negotiate a judicial composition.

Documents/Information required from the petitioning creditor

- Power of Attorney notarised and stamped with the Apostil of the Hague Convention.

Costs

Generally no court costs and legal fees occur to initiate insolvency proceedings or to follow up the insolvency procedure if the debtor is in the area of Attica (Athens/Piraeus). In the rest of Greece, there may be a cost of approx. 700 EUR for local lawyers.

13. Hong Kong

13.1 Amicable Phase

Atradius Collections Hong Kong deals directly with the collection processes, through via its experienced and professional debt collectors. Hong Kong is a cosmopolitan city with a good mix of foreign and local capital companies from large multinationals to small medium enterprises. Our collectors are proficient to determine the best strategy with which to pursue payment from debtors of difference types.

The legal languages are Chinese and English. The spoken language most commonly used is Cantonese and written language is Traditional Chinese which is different from mainland China as it uses 'Simplified Chinese'. All correspondence that is sent to debtors is normally written in English. Hong Kong has a small geographical area and our collectors can perform site visits to debtors if the situation requires it. It is not a common practice to charge late payment interest during amicable phase and if it is done, then debtors usually refuse to pay.

13.2 Legal Phase

The Hong Kong legal system uses British Common Law inherited from the United Kingdom when Hong Kong was still a British colony.

Once amicable collection is proven to be unsuccessful, we would evaluate the situation thoroughly in order to determine if legal actions are recommended.

Legal action in Hong Kong is considered effective and inexpensive. Once our solicitor receives the case, they would serve legal demand letters to the debtor, while also contacting the debtor to establish if there is any chance on settling the matter without starting legal action. If debtor still fails to settle the debt at this stage, legal actions will commence.

There are 3 types of courts in Hong Kong: Small Claims Tribunal, District Court and High Court.

Small Claims Tribunal

Deals quickly, informally and inexpensively with claims not exceeding HK\$50,000. Although the Tribunal is a court, the rules and procedures are less strict than in most other courts and no legal representation is allowed. The filing fee is less than HK\$120 depends on the claimed amount.

District Court

It deals with claims not exceeding HK\$1,000,000.

High Court

It deals with claims with amount from HK\$1,000,000.

Small Claims Tribunals not allowed by law to employ any third party representatives including solicitors, therefore the claimant should attend the court hearings themselves.

For other Courts, legal procedures commenced by serving a Writ of Summons to the Defendant and they normally have 14 days to file a defence. A notarized Statement of Claims is required.

If the defendant files a defence or request for payment plan due to financial difficulties, the claimant has 14 days to reply. If both parties could not entering into a consent, the Judge may call for court hearings before granting a judgement.

If the defendant does not respond to the summons before the deadline, the claimant may apply for a default judgement. However, if the defendant files an opposition to the default judgement after it has been served with a satisfactory explanation, the Court may allow setting aside the judgement and reactivating the procedures as stated above.

On 1st January 2010, a new Practice Direction on mediation came into effect. It applies to all civil proceedings in the court of First Instance and the District Court. Mediation is a voluntary process in which a trained and impartial third person, the mediator, helps the parties in dispute to reach an amicable settlement that is responsive to their needs and acceptable to all side. Parties are strongly encouraged to explore the possibility of mediation before taking their dispute to court.

Once a court judgement is obtained in favour of the claimant, we would carefully evaluate what type of enforcement is most effective and favourable to the client.

13.3 Legal costs and interests are chargeable to the defendant

The most common types of enforcement include: -

- Writ of Fieri Facias
 - Appoint Bailiffs to attend the Debtor's registered premises and seize the debtor's goods for sale.
 - The proceeds of the sale of the goods would be used in part satisfaction of the Judgment debt
 - If a third party claims to own the goods, then the third party may raise an action claiming ownership of the same
- Examination Order
 - An oral examination be conducted against the director of the debtor in order to obtain further information on the financial status of the Debtor company
- Garnishee Order
 - To seize the fund that is in the debtor's bank account
 - However, we have to proof that debtor's bank account has a credit balance, therefore, we would not be able to obtain the Garnishee Order until the Director of the Debtor can confirm in the Oral Examination the current balance of its bank account
- Prohibition Order
 - If we suspect that the directors of the debtor has the risk of escape, we may apply for a prohibit order to prevent them leaving Hong Kong. The Immigration Officer will detain the

- targeted person once they intended to depart or entering Hong Kong.
- Sufficient evidence should be provided in order to grant a Prohibition Order by the court
- In contradict with the Law of Human Right, a Prohibition Order is very difficult to be granted

- Bankruptcy / Winding-up Petition
 - To wind-up (limited liabilities company) or bankrupt (unlimited liabilities company or an individual) the debtor
 - Relatively costly
 - As an unsecured creditor, we should carefully evaluate the chance of getting any dividend

14. Hungary

14.1 Credit safeguards

14.1.1 A check of creditworthiness

Atradius can supply you with relevant information regarding the creditworthiness on your Hungarian business partner before sealing a contract and when trading on open account is strongly recommended.

14.1.2 Retention of title

In Hungary, only simple retention of title clauses are valid. The clauses have to be stipulated in writing with the signing of the contract. Unfortunately you receive no protection in case of acquisition in good faith by a third party. It is insolvency resistant as there is an option on separation of the goods in case of buyer's insolvency.

14.1.3 Pledges and mortgages

These security interests are widely used, especially mortgages and liens on financial assets. Pledges have to be stipulated and registered with a register maintained by the Hungarian National Chamber of Notaries Public, while mortgages have to be registered with the Land Register.

In case of a debtor's default, creditors may foreclose and enforce, through a judicial proceeding, the sale of the mortgaged property/pledged goods in a public auction. In case of a debtor's insolvency, debts secured by pledges and mortgages enjoy a higher priority. This increases the chances to get paid at least a partial amount of the outstanding debt.

14.1.4 Other safeguarding measures

Guarantees

- Common between parent companies and subsidiaries

Bank Guarantees

- Bank Guarantees are fairly common in Hungary, in most cases they are rather expensive for the debtor.

14.2 Payment Practice

In Hungary, most payment transactions are bank transfers. Cheques and bills of exchange are rarely used. The average payment terms that are agreed vary between 30 and 90 days.

About 80% of payments are deliberately delayed by debtors, as in many cases Hungarian companies finance their own production activities on the expense of creditors by extending payment obligations.

If no default interest rate was agreed advance, the basis for calculation is the Hungarian National Bank's basic rate plus 7%. The contracting parties are free to agree on a higher interest rate.

Due to lack of business culture and court praxis, amicable collection costs are very hard to collect either in the amicable or in the court procedure.

14.3 Out of court collection

Collection calls and payment reminders in written form are recommended. It is advised to send a reminder signed by an external collection agency strongly demanding settlement at a certain date and announcing legal measures in case of non-payment. It is strongly advised that creditors should first seek an out of court solution.

The lawsuit terms in Hungary are typically very long, sometimes lasting for several years. Atradius Collections Hungary can assist you with direct out of court collection activity and is supported by a selected network of local agents. They visit the debtors all over the country in order to collect the receivables. The local agents network can also undertake investigations in order to search an untraceable debtor.

14.4 Legal proceedings

Atradius Collections Hungary can provide you with a professional network of the most experienced law firms in Hungary in judicial credit collection. This network covers the entire territory and can manage the legal actions in all Court districts.

14.4.1 Summary proceeding for non disputed claims

An application is done with a standardised form. In charge are the respective county courts (or the Metropolitan Court). Legal costs are 3% of the claim amount, maximum 450.000 HUF (approx 1 600 EUR).

In cases where an objection is filed by the debtor, the proceeding turns into an ordinary court proceeding. Objections by the debtor may often lead to a considerable extension of the lawsuit terms.

14.4.2 Statute of limitations

In Hungary, the statute of limitations expires once the debt is more than five years old, starting from the day the debt becomes due. Outstanding receivables originating from freight forwarding services prescribe after even one year.

14.4.3 Lawsuits proceeding for disputed claims

14.4.3.1 Expected budget

Court fees are fixed by statute

First instance court cases: 6% of the amount in dispute (max. 900.000 HUF, approximately 3.200 EUR)

Second instance court cases: 6% of the amount in dispute (max. 900.000 HUF)
Compulsory enforcement: 1% of the amount in dispute.

14.4.3.2 Lawyers' fees

These have to be fixed on an individual basis. Some lawyers ask for fees based on hourly rates (between 50 EUR and 300 EUR, depending on expertise and language skills). It is also possible to agree on a percentage share of the amount in dispute (up to 5%).

In general, the losing party is charged with all court fees, but only a share of the winning party's lawyers' fees will be reimbursed by the losing party, although it is determined by the court.

14.4.4 Documents required (original, duplicates or authorised copies)

Imperative:

- Originals, or duplicates (copy with a stamp 'same as original' with signature/stamp of issuer) of invoices, proof of delivery, confirmation of orders, relevant correspondence, mandate for the lawyer (POA).

Optional:

- Company extracts of the parties, bills of exchange and promissory notes.

Average duration to get a final judgement is two – four years.

The duration of lawsuits is usually longer at the district court Budapest than at other country courts.

14.5 Insolvency proceedings

The Hungarian insolvency legislation has been amended more than 30 times in the last decade and still it has proven to be insufficient in many key areas. At present, there is still no law that governs restructuring and reorganisation.

The current legislation only encompasses the procedures of liquidation, voluntary dissolution and bankruptcy pursuant to which a debtor requests a respite of payment or payment moratorium in order to conclude a composition agreement. But this regulation is insufficient to allow financially troubled companies to reorganise properly. Under the current scheme, virtually no ongoing financing during reorganisation will be available.

Proceedings are time-consuming and insufficiently facilitated. Additionally, the creditors' involvement and participation has been poorly regulated and it lacks efficiency to enforce interests.

The treatment of secured creditors in cases of debtor insolvency, has been highly unsatisfactory. By the time a debtor has been formally declared insolvent; all assets have often been completely dissipated. Consequently, unsecured creditors receive little or no recovery at all.

In practice, over 90% of all bankrupt estates have not contained sufficient assets to even fund the costs of liquidation. As for the remaining 10%, the assets have often been consumed solely by court and procedure costs or have been lost on account of poor management decisions or fraud.

To overcome these weaknesses in Hungarian insolvency regulations, as well as making them finally coherent, conclusive and compliant with international (EU) standards, the government has decided to amend the current regulations as a first step and to then finalise a new insolvency act at a later stage.

Amendments to the Bankruptcy Act as of 1. July 2006, 1. September 2009 and 4. August 2011

- Measures on the opening of liquidation proceedings have been simplified. Courts can determine a debtor's insolvency if it fails to settle an earlier undisputed and acknowledged debt or does not contest it in a written and reasoned statement within 15 days after the receipt of a dunning letter/request for payment sent by a creditor following due date of the debt. This request for payment should contain a creditor's warning to the debtor that he will file a petition to commence liquidation. Therefore, creditors are no more required to wait out the earlier 60 days period after due date to open liquidation proceedings against a defaulting debtor. Additionally, a debtor shall be deemed insolvent, if he fails to pay his debt within a deadline established by a final and binding court order.
- Temporary administrator powers have been broadened. Creditors may file a petition for appointment of a temporary receiver before or after the commencement of a liquidation procedure, to supervise the debtor's management and assets. The receiver's proxies have been extended to protect the creditors' interests, e.g. he is entitled to inspect any asset of the debtor and may intervene if assets are removed.
- Expansion of the director's liability: The executives are directly liable to creditors if, in case of threatened bankruptcy, they do not primarily act according to the creditors' interests and by doing so, the assets of the company have decreased. During a liquidation procedure the liquidator or any creditor is entitled to establish the liability of executives having managed the insolvent enterprise within three years prior to the commencement of insolvency proceedings.

In such a way, previous company owners may be held liable even if they sold a company that was making losses or existed only on paper before the time of opening a liquidation procedure. In practice, this might become problematic as it cannot always make sure in which case there was a "threatened bankruptcy", in other words, from which date the directors should have acted primarily according to the creditor's interest.

- Secured creditors' rights have been strengthened: Pledges (mortgages or liens) are fully recognised even if they have been concluded just one day before the commencement of liquidation proceeding. All claims of creditors secured by such collateral are satisfied close to 100% (less costs of sale and liquidator's fee). In the past, the recoverable amount was only about 50% in advance to liquidation expenses.
- Special bankruptcy procedure for companies with significant national economical importance.

14.5.1 Expected budget

Court fees are fixed by statute:

Initiation of insolvency (liquidation): 50.000 -75.000 HUF (approx. 150-300 EUR).

Lodging the claim: 1% of claim amount, maximum 200.000 HUF (approx. 800 EUR).

Lawyers' fees have to be fixed on an individual basis. Some lawyers ask for fees based on hourly rates (between 50 and 300 EUR, depending on expertise and language skills). It is also possible to agree on a percentage share of the claim amount (up to 5%). Atradius Collections Hungary can lodge your claim/represent you in the insolvency procedure with favourable tariffs.

14.5.2 Documents required

Originals, duplicates, or authorised copies

Imperative:

- Originals, or duplicates (copy with a stamp 'same as original' with signature/stamp of issuer) copies of invoices mandate for the lawyer (POA).

Optional:

- Proof of delivery, confirmation of orders, relevant correspondence company extracts of the parties, bills of exchange, promissory notes.

Average duration is two – four years.

The duration of insolvencies is usually longer at the district court Budapest than at other country courts.

15. India

15.1 LDC

AC India makes use of a very experienced law office in India, which works like a debt collection office visiting the debtors and negotiating payment schedules and is in a position, if needs be, to represent us in Court in a very efficient way.

15.2 Other actions

In depth solvency reports on debtors can be obtained from our agent in order to better estimate the recovery prospects and to avoid needless costs. Our law office can supply us with any legal services we should need.

15.3 Interest

The Indian legal system allows for contractual interest up to maximum 14% depending on case to case. However, in litigation cases, it is at the discretion of the Court how much interest is awarded.

15.4 Legal phase

Local customs and convention can be recognized by the courts. India has one of the oldest legal systems, with its law and jurisprudence handed down from the British are forming an ongoing tradition. Schematically, the Indian judicial system is divided into District Courts, High Courts and Supreme Court.

Some of the District Courts have unlimited pecuniary jurisdiction and in some states the Districts Courts have a limited pecuniary competence (e.g. in Delhi). The highest court in each district is the District and the Session judge is empowered to render any sentence. This is the main court of Civil Jurisdiction. There are some 21 High Courts having jurisdiction over one or more states.

The bulk of the work of most High Courts consists of Appeals from lower courts, winding up petitions. Below the High Courts there are a lot of Subordinate Courts (Civil Courts – Family Courts). The Legal system is complex and procedures are time consuming. In addition, corruption is always a factor which the creditor has to take into account. It is not advisable to start legal actions if the creditor does not have a strong case with unequivocal documents and evidence.

15.4.1 Legal action (types & costs)

15.4.1.1 Summary Action

A summary action can be started, if the creditor has bills of exchange or promissory notes. The debtor is not entitled to defend the suit, but must ask the Court permission to defend within 10 days from the date of the service of the summons upon him.

Permission to defend will only be granted if the affidavit filed by the debtor discloses facts, which the Court may deem sufficient for granting permission to defend. The object underlying the summary procedure is to prevent unreasonable obstructions by a defendant who has no defence.

Documents needed:

- Notarised Power of Attorney
- Bills of exchange, promissory notes, copy invoices
- Court costs: applicable court costs – differ from state to another state. Some may charge 7,5% of the Suit amount but others will charge only 1%. Lawyers' fees have to be negotiated prior to start proceedings: a lump sum or rates on an hourly basis.

15.4.1.2 Ordinary Suit

Extremely time-consuming procedure where the creditor is confronted with a lot of obstacles like remedies, adjournments, corruption. It is not recommended to start ordinary actions in India, the creditor should try to find an out of Court settlement because most of the time ordinary actions conclude with no concrete results at the end of the day in terms of recovery.

There is little point in obtaining a judgement after several years if it cannot be enforced because the debtor is insolvent or has organised his insolvency. According to the Code of Civil Procedure the, Civil Courts are entitled to judge all suits of civil nature including breach of contract etc. A suit can be filed at the place where the debtor is conducting business, where the company has its office or where cause of action arose.

Most of the time the creditors will have to present affidavits signed by witnesses and duly notarised. At the time of admission or denial of documents during court trial, creditors will be even required to be present in the Court for cross-examination.

Documents needed:

- Notarized Power of Attorney complete file: invoices, orders, confirmations of order, contract, transport documents and proves of delivery, correspondence, technical reports, etc. Collection costs:

See above, but these costs can be significantly increased depending on the complexity of the case and especially attorneys' fees.

The losing party has to reimburse the legal costs to the winning party. This depends however on the decision of the Court and more particularly for the lawyers' fees for which reimbursement will generally be symbolic

15.4.2 Expected Time Frame

Summary Action: 1 year (with execution) or more depending on circumstances.
Ordinary Suit: 4/5 years or more depending on complexity of the case.

15.4.3 Execution of the judgement

Enforcement of judgements is carried out on all movable or immovable assets provided they have been identified, located previously and they are free of encumbrances.

15.4.4 Statute of Limitation

Three years for commercial invoices as well as for bills of exchange and promissory notes.

15.5 Insolvency proceedings

a Compulsory liquidation (winding up): Filed by the debtor, a creditor, the Registrar of Companies, any person authorised by the central government upon a report of an inspector, official liquidator during a voluntary winding up. In our experience it is an extremely long process for the creditor to get debtor's liquidation.

b Voluntary liquidation (winding up): In a voluntary liquidation, if the debtor company is solvent and the directors are making a declaration of solvency, the winding up is called a members' voluntary winding up. If, however, the debtor company cannot pay its debts and the directors cannot make a declaration of solvency, then the winding up is called a creditors' winding up where by the creditors may intervene more in the winding up process.

Claims are lodged whereby all documents evidencing the claim have to be produced- and usually the liquidator appointed sells all properties of the debtor company for cash or against shares in other companies for distribution to the creditors but the dividend prospects for unsecured creditors are generally extremely poor. Liquidation proceedings are very slow and can last several years.

c Receivership: a debenture holder may appoint a Receiver. On his appointment the assets are charged in favour of the debenture holder and the company cannot use these assets any more in the course of its normal business.

Claims are lodged but aim of this procedure is to satisfy the debenture holder either by continuing the company's activities or by selling assets and liabilities to a third party or to realise the company's assets. Any remaining dividend after satisfaction of the debenture holder will be distributed to the unsecured creditors. Of course, the Receivership is not profitable at all for the unsecured creditors.

d Sick Industrial Companies Act (SICA): Enacted in order to detect timely sick or potential sick companies and to have preventive measures determined by a body of experts, the BIFR (Board for Industrial & Financial Reconstruction).

All legal proceedings against SICA companies are suspended including winding up proceedings. The BIFR is deemed to be a civil court and will adopt measures aiming at restructuring capital, selling surplus assets, securing proper management, selling/leasing units to other persons.

The process of revival through BIFR is very slow (even 10 years or more but in average 6/7 years).

- The criteria to determine 'sickness' of an industrial company are:
- The accumulated losses in the given financial year to be equal to or more than its net worth i.e.its paid up capital and its free reserves.
- The Company should have incurred cash losses during 2 consecutive years
- The Company should have completed 5 years after its incorporation
- It should have 50 or more than 50 workers on any day of the 12 months preceding the end of the financial year.
- It should have a factory licence.

15.6 Types of companies

1. Proprietorship (not incorporated):
One individual is owner of the business. He is personally liable.
2. Partnership (not incorporated):
Partners share with each other profits and losses.
3. Private Limited (incorporated):
Limited liability of the associates.
4. Public Limited (incorporated):
Not a private company with a higher paid-up capital.

15.7 Retention of title

Such a clause should be stipulated in writing with the sealing of the contract but it does not provide a real protection against acquisition in good faith by third parties. Its legal enforcement is very difficult and cumbersome.

16. Ireland

16.1 Late Payments in Commercial Transactions Regulations 2002

An EU wide law came into effect on 7 August 2002 to combat late payment in commercial transactions. This law was implemented in Ireland by Regulations which provide that penalty interest will become payable if payments for commercial transactions are not met within 30 days, unless otherwise specified in a contract or agreement.

The new Regulations provide that unless otherwise specified in an agreed contract, the interest rate will be the European Central Bank main refinancing rate plus 7%. The ECB rates in force on 1st January and 1st July apply for the following six months in each year. Only one rate will apply to a late payment – that is the rate in force on the payment date.

From the 1st July 2011, the late payment interest rate is 8.25% per annum (that is based on the ECB rate of 1.25% plus the margin of 7%). That rate equates to a daily rate of 0.022%. Penalty interest due for late payments should be calculated on a daily basis. The ECB rate may fall or rise after the 1st July. However, the late payment interest rate will not change until 1st January 2012.

Please note that solicitors in Ireland do not automatically add this interest to the debt. If you wish for this to be done you must advise them of the amount you wish to be added in accordance with the regulations

16.2 Statute of Limitations 1957

Outlines the time limit within which a creditor can chase a debtor for outstanding debts. Creditors are given a fixed period of time to chase their debtors, which is outlined in Statute and is 6 years. After this time it is no longer possible to pursue their debt.

16.3 Legal Actions

The process for litigation in the Republic of Ireland is very similar to that of the UK, however it is sometimes more lengthy and costly to take action in Ireland.

The process begins with the issue of two 7-day letters, each seeking payment from the debtor prior to formal litigation

There are 3 levels of court depending upon the value of the debt

- District Court – up to EUR 6,350
- Circuit Court – up to EUR 38,093
- High Court – over EUR 38,093

Should the debtor fail to respond to the 7-day letter, then the solicitor will issue a Civil Bill to the Court for service on the debtor – this process can take up to 6 – 8 weeks depending on the location of the court in proximity to the solicitor, and the volume of Court cases.

Once the Civil Bill has been served on the debtor, they can of course, return a Notice of Intention to Defend. This means that the solicitors will seek details of the defence and the case will be referred to the Master for a hearing.

The exact route, similar to the UK courts, depends upon the nature and severity of the defence. The debtor is allowed a period of 21 days to respond to the Bill. If there is no response to the Bill, then an affidavit of debt is issued to the client.

16.4 Affidavit of Debt

This is a compulsory document in Ireland and must be signed by an official of the client who has sufficient awareness of the debt. At this time it is also necessary to confirm the exact amount of the debt.

The sworn affidavit is returned to the court by the solicitors and a return date set by the Court – this could be up to 3 months from the submission of the affidavit. The solicitors will then seek Judgment and the enforcement procedure begins once this is issued.

16.5 Enforcement

A judgment does not necessarily lead to a successful collection. The enforcement officer will visit the premises to try and collect the monies. The normal enforcement procedure is via collection by the Sheriff, but the Judgment itself is also published in Stubbs, a publication that is readily available to all and contains details of all judgments issued.

It is worth noting that the Sheriff coverage in Ireland is limited and enforcement is often a very prolonged procedure taking as long as 6 to 12 months.

16.6 Legal Costs

These will differ greatly depending upon the type of legal action necessary. In any case, our experienced collectors will have a full discussion with you regarding costs and time scales before legal action is commenced. Certain legal costs can be charged to the debtor, e.g. some court costs. The decision to allocate costs lies with the judge but in most cases approximately 60 – 70% of all costs are for the debtor's account after successful judgment.

16.7 Insolvency

If we establish that your debtor has become insolvent we will advise you whether there is any hope of a payment from your debtor.

We will also register your debt with the insolvency practitioner. If it is judged that there will be dividends at some point in the future, we can monitor the debtor to claim the dividends when appropriate.

However there is a procedure which operates only in Ireland called an Examinership.

The Examinership runs for a period of 100 days under the protection of the Court.

An Insolvency Practitioner or Liquidator is appointed to review the failing business and make proposals for consideration by creditors.

Any proposals agreed by the creditors must then be ratified by the court and the court will issue a report agreeing the same and detailing the amount of any dividend payable.

17. Italy

17.1 LDC

Atradius Collections Italy can supply you with a selected and professional network of the most experienced law firms in Italy in the judicial credit collection activity. This network covers all the territory and is able to manage the legal actions in all Court districts.

More than mere legal assistance, AC Italy can also assist with direct collection activity. These are managed by a selected network of local agents, who visit the debtors all over the country in order to collect your money.

According to our experience, this solution is particularly successful for medium-low amounts, for specific debtor's categories (individual sole traders, shops, small companies) and for particular trade sectors (e.g. food, textile, clothes, and shoes). The local agents' network can also investigate locally in order to search an untraceable debtor.

17.2 Other actions

AC Italy can evaluate the solvability of a debtor and the financial situation of the companies. To investigate in a more accurate way, we can add some extra services for our clients such as bank account research, officially booked goods research such as vehicles, crafts, estates research and estimation in the public registers. All these elements can help to create a clear picture of the debtor's situation and will assist in finding the best way to collect your money.

17.3 Interests

We always recharge debtor with the calculation of interest for 8% on daily basis (see European Directive 2000/35/CEE). The interest is always requested, both in an amicable and in a judicial phase. Under a cultural point of view, unfortunately, it is rather difficult to get the full amount of interests from a debtor. It is absolutely not part of the mentality of Italian debtors, also because most part of the Italian companies that collect the money by themselves have never recharged a debtor with interests. Often they tolerate some delays in the payment of the invoices (see particular sectors, such as clothes, shoes, and food). Interests are often considered a matter of negotiation between debtors and collectors.

17.4 Legal phase

The Italian juridical system is a typical example of a civil law system. For credit collections we refer to the Italian Civil Code (Codice Civile) which contains and implements also all the rules about commercial law and Civil Action Code (Codice di procedura Civile) which disciplines the civil trial in Italy.

Furthermore, the corpus of the laws concerning the insolvency procedures is relevant. The judicial organisation foresees several kinds of judges, according to the amounts of credit (Justice of the Peace, One- Judge-Tribunal, Tribunal).

Traditionally, any legal action starts on the Court district of the debtor.

The ordinary Civil Action is rarely used to collect a credit founded on a written document, such as an invoice. The proceeding is very long and can last for some years, it is also expensive due to the fees of the lawyer that is engaged in several hearings and different activities such as witness examinations, evidence analyses, etc..

The main purpose of the ordinary Civil Action is to determine the existence of the credit that is due and the relations between parties. In case the due credit is based on documents, the law allows us to use a faster and cheaper procedure: the summary judgement (decreto ingiuntivo). This requires only limited intervention from a judge, except when the debtor opposes to the petition. These are the most common steps to collect credit in Court.

17.5 Legal actions (type and costs)

First, the lawyer sends a reminder to the debtor, a registered letter, so there is proof of delivery. Within eight to ten days from the receipt of the reminder, the debtor must pay. If he does not pay or he does not reply (e.g. disputing the debt) the judicial phase is started with the decreto ingiuntivo.

Documents needed:

- Copy of unpaid invoices
- Copy of transport documents signed by debtor
- Abstract from Accountancy Book certified by a public notary (if we do not have these documents) secondly the lawyer writes the Petition of Injunction decree, which has to be signed by creditor on the right side, in the bottom, as power of attorney document. Furthermore, the petition has to be filed in Chancery with all enclosed documents as evidence. The judge examines the question and if he agrees to its correctness, he issues an Injunction decree. This process may take up to four or five months.

The original documents are taken into the Chancery and an authorised copy to notify the debtor. For this reason is it of utmost importance to know the exact address of the debtor. The lawyer must deliver the decree within 60 days from the issue of decree. When the debtor receives the decree, he has 40 days to oppose it. If the debtor files for opposition, the civil trial starts. It is a very long process, regarding all the phases required by the Italian Code in order that the Judge can issue the judgement..

When there is no opposition raised, the decree becomes executive and the creditor can claim for the attachment of goods of the debtor. The executive seal is added to the decree and the Chancery will issue a Writ of execution (precetto). Both documents have to be notified to the debtor.

Within 90 days the creditor has to start forced execution, in Italian language "pignoramento". If the debtor does not pay or does not make opposition within five days from receiving the decree, the lawyer brings in the executive Injunction decree, the order of injunction to pay and proof of notifies to a bailiff.

If the creditor possesses cheques or promissory notes, which are unpaid nor rejected, he can start directly with the Writ of Execution, because these notes are executive titles.

If a debtor makes an opposition to the Injunction decree or to the 'writ of execution', the summary judgement is suspended and an ordinary civil action takes place. The creditor has to answer to the opposition with a proper statement of defence (comparsa di costituzione e risposta.)

During the first hearing, the judge will evaluate the statements of both parties and the documents. He can decide to declare the temporary execution of the injunction opposed (provvisoria esecuzione). In this case, the summary judgement process will start again with the next steps (writ of execution, attachment, etc.) while the civil action takes place in parallel.

When the creditor gets the temporary execution from the judge, he has almost won the legal action already, and the ordinary civil action will end shortly thereafter. The cost of each legal action strictly depends on the amount of the credit, following a very complex system of tariffs with many ranges and different actions.

17.6 Power of attorney

A generic power of attorney cannot be used for all kinds of legal actions in Italy. It means that for each action the petition has to be signed by the legal representative of the creditor. The proxy must be in Italian. AC Italy can provide translations, but the original document with the signature must be always the Italian version.

17.7 Execution of a judgement

AC Italy can proceed with the attachment of ordinary goods, such as estates and properties, if it is known where they are. The attachment of estates is a really expensive measure and it can take several years before this process is ended. This procedure is solely used for high amounts, above 100 000 EUR. Is it also possible to attach the salary or a retirement pension of a debtor for 16 % each month until the payment of the credit, involving the National Retirement Institute or the employer.

17.8 Collection costs (Charged to debtor)

A debtor is always charged with the costs paid for the legal action. In particular cases, the creditor has to pay a small amount. It is common that the payments of the legal costs are matter of agreement to stop the legal procedure with the immediate payment of principal and interests. In general, AC Italy collects on customers' invoices only in the amicable phase.

Due to contract laws, the collection convention is signed between AC and the creditors, so another person cannot be linked to the tariff. The law generically allows us to request it but without specifying the amount, it mentions the criteria of transparency and proportionality and the legal tariff of lawyers, it is not valid anymore.

There are strong cultural roadblocks against paying for the collection costs, and they are stronger than the dislike of interest for late-payment. We cannot claim the amicable costs in Court, there is no jurisprudence in it.

17.9 Insolvency procedures

The most diffused insolvency procedures in Italy are: bankruptcy (fallimento) and judicial composition with creditors (concordato preventivo)

17.10 Bankruptcy

In Italy, not all debtors can be declared bankrupt. According to Italian law, small debtors like individual shops and the small-scale farmers cannot be declared bankrupt.

This counts also for small firms in which the owner is also the manager and in which the personal work weighs heavier than the value of the goods involved. Furthermore you can ask for bankruptcy of a debtor if your credit is above 30.000 EUR and the debtor has a turnover of min. 200.000 EUR. The last requisite is that the debtor should not have been cancelled from the Chamber of Commerce for more than 1 year.

The procedure takes a long time, some years. The judge and the insolvency practitioner schedule a hearing to receive all the claim petitions for lodging. After this hearing, the petitions are laid and you have to wait for a long time for their acceptance, which makes the costs higher. Finally, the debt situation is fixed with a judge's sentence and the very long procedure of the liquidation of the bankrupt's assets can take place.

17.10.1 Composition with creditors

Just to avoid bankruptcy, the debtor can ask directly to the Court to be admitted to this insolvency procedure. The debtor's petition must include how much they can pay to the creditors in percentage. This offer has to be approved by the majority of the creditors (considering the amount of each credit) and should then be validated by the court. After that, the insolvency practitioner starts to liquidate the asset referring to the payment plan.

17.11 Type of companies

In Italy, there are two main types:

Person companies, unlimited: SS, SNC or SAS

In a SS or SNC, the partners are unlimited responsible, for a SAS only the declared unlimited partner.

Capital companies, which are limited: SRL, SPA, SAPA

In this group the partners cannot be linked to the company's situation

18. Luxembourg

18.1 LDC

18.1.1 Amicable phase

Atradius Collections Luxembourg can support you with collection of your debts. The collection process is managed by a selected network of local agents who visit the debtors all over the country in order to collect your money.

According to our experience, this solution is particularly successful for medium-low amounts and for specific debtor's categories like individual sole traders, shops, small companies and for particular trade sectors e.g. food, textile, clothes, and shoes. The local agents network can offer local investigative research to find an untraceable debtor.

18.1.2 Legal phase

AC has a network of selected and professional lawyers experienced in the judicial credit collection activity. This network covers all the territory and is able to manage the legal actions in all Courts districts.

18.1.3 Information about financial health of the debtor

AC can also evaluate the solvency and the financial situation of the debtor. For investigations in an accurate way, we deliver extra services to our clients like research on bank accounts, or on officially registered goods, such as vehicles, equipment or real estate. All these elements can help to gain a clearer picture of the debtor's situation and identify the best way to act to collect your money.

18.2 Interest & penalty clause

18.2.1 Interest

18.2.1.1 Amicable phase

Interest can be recovered from the debtor based on the agreed terms and conditions of the sale. The claim of interests and a possible reduction can be the object of negotiation between the collector and the debtor.

18.2.1.2 Legal phase

Again, interest can be recovered according to the agreed terms and conditions of the sale. If the interest is disputed, the Court will determine if the debtor has approved the agreed terms and conditions of sale.

When the interests foreseen by the agreed terms and conditions of sale cannot be charged, it is possible to recover from the debtor the interests at the legal rate or at the rate according to the statute of 18.04.2004 (based on the European Directive 2000/35/CEE).

The rate of the legal interest is fixed every year by the government (a communication in the Official Journal of Luxembourg); the rate of the interest based on the statute of 10.08.2004 is communicated every 6 months by a communication in the Official Journal of Luxembourg.

18.2.2 Penalty clause

18.2.2.1 Amicable phase

The penalty clause as foreseen in the agreed terms and conditions of a sale can be recovered from the debtor; however, the use of a penalty clause and a possible reduction can be the subject of negotiation between the collector and the debtor.

18.2.2.2 Legal phase

The penalty clause as foreseen in the agreement of the sale, can be recovered; however, the Court can reduce or cancel the penalty clause if the creditor does not prove written acceptance of the terms and conditions of sale by the debtor.

18.3 Applicable law

Legal actions to recover receivables are based on the general principles according to the Civil Code (Code Civil), the Commercial Code (Code de Commerce) and the Judicial Code (Code de Procédure Civile). Particular rules of law can be used in special circumstances or special cases. Special laws, listed in the Commercial Code, govern the most common insolvency procedures, bankruptcy, composition and controlled administration.

18.4 Judicial organisation

There are different courts according to the amount of the claim and the capacity of the debtor:

- Court Capacity Debtor
- Justice of the Peace Merchant or non-Merchant
- District Court (Commercial Chamber) Merchant
- District Court (Civil Chamber) Non-merchant

According to the principles of the Judicial Code, the action against the debtor in payment of the claim is brought before a competent court in the district where the debtor has his place of residence or his registered address in cases where the debtor is a company.

Documents needed for legal action:

- Copy of the invoices
- Copy of the terms and conditions of sale
- Power of attorney signed by the client
- Copy of the formal notices and/or reminders sent to the debtor It is highly recommended to produce also proof of orders, proof of delivery of the goods and other written document signed by the debtor in which he acknowledges

the claim, e.g. the request of payment by instalments.

18.5 Legal proceedings

18.5.1 Reminder sent to debtor by lawyer

The file is sent to the lawyer, who usually sends a reminder to the debtor. The debtor has 15 days to pay. If he does not comply or if he does not react (e.g. dispute), the lawyer will start legal proceedings. He will draft the text of the Summons and will communicate it to a competent bailiff.

18.5.2 Summons by bailiff

The announcement of the action in payment of the claim (Summons) is notified to the debtor by the bailiff who will summon the debtor for the competent court in the district where the debtor has his place of residence in case the debtor is a person or his registered address when the debtor is a company.

18.5.3 Introductory hearing & judgement

The case is presented to the Court using the procedure of Summary Judgement. The Court evaluates the evidence and examines whether the claim is not seriously disputed.

If the Court accepts the claim, it renders a summary order (ordonnance de référé), this order can be subject to an appeal.

If the Court partially accepts the claim, it renders a summary provisional order. Even if this procedure is called summary, it can take several months before the Court renders its judgement, because it will only handle the case in due course when all the old cases and the cases with priority have been dealt with.

If the Court refuses the claim, the claim has to be introduced to the Court by an ordinary legal procedure after a Summons by bailiff. The judgement in this case can be subject to an appeal and therefore a case like this can take a lot of time, it can last even several years.

18.6 Average duration of a legal procedure

The time frame to get a judgement, without enforcement, is 4 months on average. If the case is disputed or in case of appeal, it can take up to several years.

18.7 Costs of legal action

18.7.1 Costs of legal proceedings

Summons and inscription in the Court's calendar approx 250 EUR. An in-house lawyer drafts the text of the summons.

Indemnity of procedure: the Court decides the amount. These costs are rechargeable

to the debtor, except if the Court decides otherwise.

18.7.2 Costs and fees of legal representation

The costs depend on the importance of the case, the complexity of it, the duration and the tasks performed by the lawyer. These costs are not rechargeable to the debtor.

18.7.3 Summary procedure

There is also a summary procedure before the Justice of the Peace to obtain payment in Luxembourg. For the recovery of receivables this procedure is not appropriate because of the following disadvantages:

- The claim must be undisputed
- The whole claim cannot exceed 10 000 EUR. Particular formal conditions about the request form you have to fill in, proof of the capacity of the person signing for the creditor, documents to produce.

If the Justice of the Peace rejects the creditor's claim or if the debtor has lodged an appeal against the initial decision of the Justice of the Peace, the creditor has to use one of the procedures mentioned above.

18.7.4 Power of attorney

In Luxembourg, you need a Power of Attorney for each file and it has to be signed by the creditor's legal representative. The proxy must be drafted in the language of the legal procedure (French).

18.7.5 Execution of a judgement

The enforceable copy of the judgement is communicated to the bailiff who will officially notify the judgement to the debtor.

The debtor has 40 days from this notification to lodge an appeal against the judgement. As soon this period of time is expired without appeal, the judgement is definitive.

The bailiff sends a legal notice to pay to the debtor. If the debtor does not comply, the enforcement of the judgement by bailiff can begin. In these conditions, the bailiff can proceed with the attachment of debtor's movable property and a public sale of these goods. If the debtor owns real estate, the bailiff can proceed with an attachment. If the debtor still refuses to comply, a public notary will sell the real estate in a public sale.

18.8 Collection costs (Charged to debtor)

18.8.1 Costs of legal proceedings

Summons and inscription in the Court's calendar cost approx. 250 EUR. An in-house lawyer drafts the text of the summons.

Indemnity of procedure: the amount is decided by the Court. These costs are rechargeable to the debtor, except if the Court decides otherwise.

18.9.2 Costs and fees of legal representation

Depend on the importance of the case, the complexity of it, the duration and the tasks performed by the lawyer. These costs are not rechargeable to the debtor.

18.8.3 Costs of enforcement of a judgement

Costs of enforcement of a judgement by bailiff are always recharged to the debtor.

18.9 Retention of title

The statute of 31.03.2000 has introduced the possibility in Luxembourg to apply the retention of title.

The retention of title is opposable to third parties in case of bankruptcy and composition after bankruptcy but not in the case of controlled administration).

The conditions of opposability to third parties are very strict:

- The clause of retention of title has to be established by a written document at the latest at the delivery of the goods.
- The clause has to be accepted by the buyer, the creditor has to be able to produce proof of it, if necessary.
- The goods have to be movable and have to be physically still in possession of the buyer. In the case of bankruptcy, the action by the creditor to activate the retention of title has to be initiated to the trustee within 3 months after the judgement that declared the debtor bankrupt. If the creditor activates the retention of title after this 3 month period, the action will be forfeited. Retention of title is not a successful procedure: Many times the retention of title procedure is used; at least one condition is not satisfied.

18.10 Insolvency procedures

18.10.1 Bankruptcy

Only a debtor with the quality of a merchant can be declared bankrupt in Luxembourg.

A trustee is assigned by the Commercial Chamber of the District Court of the district where the debtor has his place of residence (debtor is a person) or his registered address (debtor is a company).

The documents needed to lodge a claim are:

- Copy of the invoices
- Copy of the terms and conditions of sale
- Statement of account

If requested by the trustee the power of attorney duly signed (see chapter 4.9.5).

The claim has to be lodged to the Clerk of the Commercial Chamber of the District Court within the timeframe mentioned by the Court in the judgement pronouncing the bankruptcy and not later than the inventory of verification of the claims.

After verification, the claims are accepted or disputed by the trustee. The Commercial Chamber of the District Court will set a hearing and decide in disputed cases. The average duration of the handling a bankruptcy is one to five years, depending on several factors.

18.10.2 Composition

Only a debtor with the quality of a merchant can be granted a composition in Luxembourg. A composition request is presented by the debtor simultaneously at the Commercial Chamber of the District Court in the district where the debtor has his place of residence (if debtor is a person) or registered address (if debtor is a company) and at the High Court of Justice. The request includes a list with all the creditors.

After reviewing the case, the Court will accept or reject the temporary stay. If the request is accepted, a practitioner is appointed by the Court.

The creditors are called to a hearing in Court to give their opinion about the request. A detailed report is drafted. The Court will justify its decision in a detailed manner.

The whole case is then sent over to the High Court of Justice. It can only grant the definitive stay to the debtor if a majority of the creditors have agreed. The High Court of Justice determines the duration of the definitive stay. This procedure is rarely used.

Controlled Administration

Any merchant, whose credit is weakened, can ask the Court to grant him the Controlled Administration to reorganise his business or to help liquidate his assets.

A motivated request is presented to the Commercial Chamber of the District Court in the district where the debtor has his place of residence when the debtor is a person or his registered address when the debtor is a company.

If the request is accepted, a judge is appointed to draft a report within a timeframe fixed by the Court. After the submission of the report by this judge, the Court hears the merchant and rejects or accepts the request.

If the Court grants the Controlled Administration to the debtor, all the assets of the merchant are put under the control of a judge specifically appointed by the Court and who has to draft in a timeframe fixed by the Court a detailed plan of reorganisation or liquidation of the assets of the debtor.

This plan is communicated to all creditors who have to notify within 15 days, whether they agree or disagree. If a majority of creditors agree, the Court will approve the plan; otherwise the plan is refused.

18.11 Type of companies

SNC Société en nom collectif
Partnership Unlimited

SCS Société en commandite simple
One or more associates commandités and one or more commanditaires

Associates commandités
Unlimited

Associates commanditaires
Limited to the amount of the investment

SA Société anonyme
Joint Stock Company Liability limited to capital invested into the company

SARL Société à responsabilité limitée
Limited Liability Company, liability is limited to the portion of the capital invested

19. Mexico

19.1 Amicable phase

Payment reminders in written form and collection calls are recommended to start collection efforts. At this stage the objective is to determine whether or not a debtor is interested in an amicable payment agreement. Visits to the debtor's premises are required in many cases, to make a stronger demand for a settlement at a certain date. It allows the debtor to notice that legal actions will be taken in case of non-payment.

AC advises out of court solutions as first and best solution, due to the average lawsuit terms in México, which from 2 to 4 years. Atradius Collections Mexico can support with the direct out of court collection activity including the visits to the debtor premises. Within Mexico City visits can be done by an experienced Atradius Collector, visits to debtors in some other states of México, Central and South America are carried out by agents within our network.

19.2 Dispute

It is very common in Mexico that a debtor disputes a debt, in many cases the disputes are not justified and debtors take that argument to avoid payment. AC Mexico recommends that a payment agreement is created, making a reduction on the debt amount if possible. It is advised to follow this solution instead of starting a legal procedure.

Before starting a legal procedure to collect a disputed debt, it is necessary to make an exhaustive review of all the debt documents which the creditor has, to allow AC Mexico to make a recommendation regarding the success rate of the collection and if a legal procedure could be cost effective.

19.3 LDC

AC Mexico makes use of a selected and professional network of the most experienced law firms and attorneys in the judicial credit collection activity. This network covers the main states in Mexico, México City and is able to manage the legal action in all Court districts.

19.4 Interest

In the amicable phase a debtor is not enforced to pay interest. In the judicial phase the interests are always charged. The percentage of interest that can be requested depends on the arrangements the creditor and the debtor have made in writing (contract). If no default interest rate was agreed the basis for calculation is a 6% annual interest rate.

19.5 Legal phase

19.5.1 Legal actions

There are several options to pursue a collection in court, mainly depending on how the commercial transaction was conducted and documented.

You can either file a complaint for an ordinary proceeding or opt for an executive proceeding. If an executive proceeding is not available, there is a preliminary proceeding available that can further enable the executive proceeding.

19.5.1.1 Ordinary proceeding

It mainly works for cases where the creditor has not got a credit instrument (promissory notes, cheques, bills of exchange duly signed) or a special title document and therefore, is not allowed to conduct for immediate interim measures to secure proper execution of a final judgement.

Some of the most important features of the ordinary proceedings include the fact that it is a relatively longer process with more time and opportunity for preparation. This also applies to the admission of evidence in court, furthermore, it provides wider opportunities to counterclaim.

19.5.1.2 Executive proceeding

Many creditors find it more reliable and comfortable to sue with an executive action rather than through an ordinary proceeding. First of all, the special title on which the proceeding is based, creates the presumption that the claim exists and that it is legally valid. The creditor turns the burden of proof to the debtor.

Also this process is shorter and faster proceeding in which a final resolution is usually rendered in less time. This proceeding is only available if the creditor has a executive document such as promissory note or cheque.

19.5.1.3 Preliminary proceedings

The main purpose of a preliminary proceeding within the collection process is to obtain a judicial acknowledgment of debt that will enable an executive action instead of following an ordinary proceeding.

The court will set up a hearing date in which the debtor will have to respond as to whether he owes the creditor or not. If the debtor fails to show up at the time of the hearing, the judge will consider the stated claim as legally acknowledged by the debtor. The supporting documents to the acknowledged debt will constitute a credit instrument that can be enforced through an executive proceeding.

19.5.2 Legal phase (Process)

To pursue legal actions in Mexico, the following documents are required:

Imperative documents

- Original unpaid invoices
- Statement of account
- Original Purchase orders
- Original Bills of lading
- Original transport documents, where debtor signs the merchandise reception
- Power of attorney.

Optional documents:

- Commercial Contract
- Original promissory note
- Original unpaid/bounced cheque(s)
- Relevant correspondence between creditor and debtor

Note that if the documents are not written in Spanish a proper and certified translation of all documents is needed

The general process of commercial litigation is comprised of five main stages for executive proceedings and ordinary proceedings. Main features of each stage or phase are the following considering a contested lawsuit:

19.5.2.1 Exhibition stage

File a formal complaint and proper service of process upon defendant.

19.5.2.2 Probatory stage

In Mexico, any piece of evidence that might support the cause of action, such as documents, witnesses, experts, etc., must be first proposed to the court. It is important to consider that in Mexico there is no pre-trial discovery phase or proceeding. A party commencing a lawsuit will need to have everything ready upon filing its claim.

19.5.2.3 Conclusion stage

After all evidence has been rendered and the probatory stage has ended, parties are given a period to make allegations. After the allegation period, the judge will emit a judgement.

19.5.2.4 Objection stage

After a judgement has been rendered, the creditor has time to file a petition for an appeal process; by which the proceedings or the judgement itself can be reviewed by a Court of Appeal.

19.5.2.5 Executive stage

The final step in any proceeding is executing the judgement. This is only possible

when the resolution is final (no appeal pending). Generally the debtor is granted a period of time to voluntarily comply with the judgement.

After the expiration of this period, the execution process will begin, starting with the seizure of defendant's property and sale by judicial action.

19.6 Power of attorney

To pursue legal actions in Mexico an Original Power of Attorney needs to be granted before a Public Notary and Apostil according to the Hague Convention. Powers of attorney in Mexico must be carefully drafted and will have to strictly comply with Mexican law.

19.7 Execution of a judgement

AC Mexico can proceed with the seizure of ordinary goods, and properties (if there are any) when the legal resolution is final. We advise to conduct an assets search regarding debtor's properties before starting a legal procedure. This allows AC and the creditor to have an idea of collection possibilities and whether the case could be cost effective.

19.8 Collection costs (Charged to debtor)

There is no court fee in Mexico, however creditors will need to cover expenses required to follow the process, usually around 10% of the claimed amount. Legal costs within a Legal Procedure can always be claimed to the debtor.

19.9 Statute of Limitation

The statute of limitations for enforcement of commercial transactions in Mexico is one year for retail sales and ten years for wholesale.

The time frame for enforcing cheques within the Statute of Limitations is six months after the debtor's bank rejection due to insufficient funds.

For promissory notes and bills of exchange the Statute of Limitations is generally three years after the account is overdue and four years under the same conditions for international promissory notes and bills of exchange executed in accordance to the United Nations Convention on International Promissory Notes and International Bills of Exchange.

19.10 Expected time frame

From 2 to 4 years, without adding any appeal process which could add up another nine to twelve months.

20. Netherlands

20.1 Amicable

Atradius Collections' first aim is collecting outstanding debts in the fastest and most efficient amicable manner. Atradius Collections provides customers with well-managed, highly skilled and dedicated teams of collectors and each customer is serviced by a sole dedicated collector.

The collectors stay on top of each handled file and are well educated and trained to put the utmost pressure on debtors in order to ensure they pay the outstanding amounts. If necessary, the collectors can be informed and advised by the Dutch legal team, which consists of experienced legal collectors, each having a master degree in law.

The dedicated collectors contact the debtors in writing, telephone and, if any added value is expected, by personal visits in order to collect the outstanding amounts on a short term. If necessary and in consultation with our customer, collectors can agree on payment plans and provide close follow up.

Each development and new piece of information received will be communicated with customers immediately

20.1.1 Disputes

In each handed over file it might be that collectors are confronted with disputes. Bearing in mind that legal proceedings take a lot of time, as well as involving high court costs and legal fees, the collector's first aim is to come to a solution in respect of which they will start negotiations with the debtor, of course in close communication with the customer.

In regard of disputes the Dutch legal team can be of assistance to the collectors as well as customers, whereas a legal collector might take over the case if the dispute is mainly related to legal aspects.

In the event that mediation by legal collectors might not lead to an agreement and legal proceedings are indicated, the file will always be dealt with by the Dutch Legal team, because they are well skilled to either handle legal procedures themselves or monitor our LDC's.

20.1.2 LDC

AC Netherlands can provide customers with a high quality selected and professional network of experienced lawyers and/or law firms in the Netherlands, with whom we have negotiated and agreed very competitive tariffs - we might say the lowest in the Netherlands. Our LDC network covers the whole Dutch territory and lawyers are able to carry out all legal actions required in all District Courts.

Further AC Netherlands can offer customers the services of a selected quality, network of professional and experienced bailiffs who are appointed by law and are the sole competent party to carry out the execution of verdicts / judgements.

20.1.3 Other actions

AC Netherlands is in close co-operation with information agencies and its network with bailiffs is able to evaluate the solvency of debtors and able to gather information about the financial situation of debtors. Amongst others, AC Netherlands can do research for officially booked goods, estates and other assets. Investigating the debtor's financial situation is helpful in determining which legal action might be fruitful and moreover to decide whether legal action might lead to any result in the end.

20.1.4 Interest

AC Netherlands always charges the debtor with the calculation of interests at 12% per annum on a daily basis. This percentage is somewhat higher than that within the European Directive concerning legal business interest, but in accordance with clauses in the majority of purchase conditions and/or other business conditions. Interest will always be claimed both, in amicable and in judicial phases. In the Netherlands it is common practice to receive interest on overdue invoices and in fact there are rarely discussions as to the liability of the debtor to pay interests.

In Court, interest is considered as a justified demand in relation to overdue invoices. If the creditor is able to prove that business conditions are applicable, interests are due according a clause dealing with interests by which it is quite common to calculate 12% per annum. In the event that no specific conditions were agreed, it is always possible to request the interest according the litigate European Directive, in the Netherlands the so-called legal business interest, which is variable.

20.2 Legal Phase

All rules concerning commercial private law are codified in the Dutch Civil Code (Burgerlijk Wetboek), whereas rules concerning procedures/courts/competencies and so on are dealt with in the Civil Process Code (Wetboek van Burgerlijke Rechtsvordering).

The judicial organisation recognises several kinds of Courts, whereas competencies are, in common, related to the amount or size of the claim. The system includes the following courts -one judge tribunal or County Court (Kantongerecht), Tribunal or Districts Court (Rechtbank), Court of Appeal (Gerechtshof) and finally the Supreme Court (Hoge Raad).

For Collections, it should be noted that for civil claims to an amount up to EUR 25000 the Dutch legal collectors can handle the legal procedures before the County Court themselves. Beyond this amount, the District Court is competent and here the law prescribes an obligatory legal representative, or lawyer. We manage these procedures through our LDC network whereas the legal team will monitor the lawyers involved.

Some branches, for instance contracting, building, graphical industry and metal industry use general purchase/business conditions in which there is stipulated that in case of disputes an Arbitration Committee will be competent.

If so, the civil judge will not be competent and there is no mandatory legal

representation.

In these files the legal collectors can handle the arbitration procedures with no limit as to the amount involved.

Civil action, i.e. legal proceedings will take quite a long time, one to two years, whereas they are also expensive because of all legal assistance required. There might be several appearances in Court, hearing of witnesses, analysis of evidence, pleading the case and personal hearings. In disputed matters, the only way to collect the outstanding debt is to go through legal proceedings as described and it should be noted that it is common practice that the judge orders both parties to appear in Court for a personal hearing.

However, if the debt is undisputed we have the possibility in the Netherlands to use a very specific legal action in order to press the debtor to payment on a short term.

This is in fact the most effective and one of the least costly procedures : Filing a petition for bankruptcy. For this procedure, we need to hand over the file to one of our LDC's, as filing such a petition has to be done by a lawyer. The petition puts pressure on the debtor that if there are any monies, it will be paid with preference to the creditor on whose request the petition was filed. Also it might be possible to come to a payment plan. In practice, it is a very efficient action and within a period of about one month there will be clarity whether the claim can be collected or not.

20.2.1 Legal Actions

We note that legal proceedings according the judicial system in the Netherlands are always related to disputed matters. Before starting legal action, collectors investigate the debtor's financial situation. If it is considered that there are enough assets in order to effectuate execution once a verdict has been received, the file will be handed over to the legal collectors.

According to Dutch law, before starting a legal procedure it is possible to file a petition with the District Court in order to be allowed to seize assets from the debtor. This seizure has a preservative character. If such a seizure is successful the creditor is obliged to really start the legal proceedings within a fortnight after the seizure. If this period elapses without a notified summons to the debtor the seizure will be considered as expired. Seizures of this kind also expire if the debtor goes bankrupt.

Once the creditor has a verdict the assets seized can be executed. During the procedure the debtor is not allowed to do anything with the seized assets.

Preservative seizure might also be considered if there is known that for instance a third party has to pay an amount to the debtor. In this respect it might be possible to go over to a seizure under this third party, who would not then pay the debtor to ensure the funds are available to the creditor.

As stated, before going legal, the file will be handed over to one of the legal collectors. This legal collector will study the case. If there are juridical terms to try to come to an agreement the legal collector will contact the client and give advice how to act further from a legal point of view.

If documents are missing or additional evidence needs to be supplied, the legal collector will ask the customer to supply the relevant information. The legal collector might handle the procedure, or send the fully documented file to one of our LDC's.

Since all efforts have been undertaken by AC Netherlands to obtain payment, the LDC does not need to write again to the debtor, but can immediately start by making a summons.

With the summons all relevant information has to be supplied to the Court, such as copy of:

- Written agreement
- Order confirmation
- Purchase conditions
- Invoices
- Proof of delivery
- Correspondence
- Other relevant information/evidence to rebut the dispute
- Information about witnesses (names, surnames, residences)
- Description of the dispute
- Counter arguments from the creditor as towards the dispute.

Once the summons is completed, it will be notified to the debtor by a bailiff (obligatory) and immediately thereafter presented to the Court.

There is minimum term of 7 days between notifying the summons to the debtor and the date that the Court will deal with the case the first time. In procedures before the County Court, the debtor can defend himself, whereas in procedures before the District Court the debtor is obliged to have a legal representative, being a lawyer. It is common to ask the Court for suspension in order to submit a written defence. Normally this is granted to a maximum period of about 3 months.

Once the writ of defence has been presented it is common practice that the Court orders a personal appearance of parties with their lawyers. Often this will be used to receive further information about the facts and also to try to come to an agreement between parties. Often additional terms are given to both parties to work out a written point of view, first on behalf of the creditor and then on behalf of the debtor. The time schedule is about 6 months.

The Court will also have a period in which to come to a decision (often to a maximum of 3 months). If the case is clear a final verdict might be given, although it's possible that one or both parties will have to submit evidence for instance through witnesses. If this is the case, the procedure will take longer, commonly around a further 6 months, before a final verdict can be expected.

The costs for legal proceedings are firstly related to the amount of the outstanding debt and are determined by the Court following a complex legislative tariff table with a wide range of calculations in legal handling. The losing party will be liable for Court costs as well as a legislative fee for procedural assistance according to the tariff table. It should be noted that a fee is related to legal handling in the procedures and therefore does not take the real legal fees into account.

The difference between legislative fees determined by the Court and the legal fees for LDC's and/or our legal collectors will be for the customer's account and cannot be recovered from the debtor.

In undisputed matters it is advisable to start legal action by filing a petition for bankruptcy through one of our LDC's. The time involved will be about 4 weeks to a

maximum of 6 weeks and the cost risk for the client is about EUR 1.250.

20.2.2 Power of Attorney

For legal proceedings we need a written approval from the client. This will be sufficient to start the appropriate legal action. There are in other words no formal powers of attorney necessary for starting legal action, but on special request from the Court it might sometimes be necessary to present a formal approval from the managing director of the creditor's company.

20.2.3 Execution of a Judgement

A bailiff appointed by law is the sole party who can take care for execution of a judgement. All assets belonging to a debtor might be seized to come to execution; however legislative preferences have to be taken into account. A claim originating from a government department, such as taxes, will always have preference, the same as a mortgage holder.

It is also possible to seize income from the debtor or payments from the government to a certain extent. Most of the time, execution will lead to payment plans and therefore the final settlement might take a long time. Once in possession of a judgement, it might also be recommended to file a petition for bankruptcy since from that moment on, the claim cannot be disputed any longer.

20.3 Collection Costs

Costs of legal action liquidated by the Court can be recovered from the debtor. In the amicable phase, we are generally able to collect the customer's invoices, interest and to a certain extent collection costs.

From a legal point of view the collection costs can only be recovered from the debtor up to a certain scale related to the principal amount which has been handed over for collection.

If collections activities were successful in recovering the principal amount, it is possible to recover a certain amount of collection costs from the debtor through legal proceedings. It is common that the Court uses a tariff table, which is related to the legal proceedings tariff table, in order to identify what amount of collection costs can reasonably be recovered from the debtor. It still is a complicated issue in jurisprudence, but it is quite clear that in most cases there is just a small amount granted, despite clauses in a written agreement and/or purchase conditions.

In fact the judge is free to condemn the debtor to pay collection costs as long as they are reasonable, but the granted costs are normally a part of the provision we use to agree with customers. Since legal proceedings concerning collection costs will take a lot of time and costs, we are quite successful in reaching agreements with the debtors.

20.4 Statute of Limitation (prescription of the debt)

Dutch law has several terms on prescription of the debt. The most common one relates to commercial (business) claims (purchase, rendering services, contracting

etc.). For these transactions a general term is valid for 5 years, calculated from the due date of the invoice.

Prescription can be opposed by registered mail and/or a written announcement through a bailiff, with the effect that a new term of 5 years will commence. It has to be noted that the creditor has to show evidence that the announcement was in fact received by the debtor. Exceptions are possible, for example the transport branch where shorter terms of prescription of debt are used, according to the CMR-Treaty.

20.5 Expected Time Frame

Legal proceedings take time. Generally in disputed cases a procedure might take 12 to 18 months before there is a judgement. If there is an appeal it can take a further year. The time involved with the execution of a sentence is difficult to predict, since it is governed by the financial position of the debtor. The procedure for filing a petition for bankruptcy will take about 4 to 6 weeks.

In the amicable phase AC Netherlands endeavours to come to a settlement of cases immediately after starting working on the specific case. Including payment plans AC Netherlands, urges them to come to a full recovery within 6 months of starting the process.

20.6 Type of companies

Like a lot of other countries, the Netherlands has two major groups of companies, which are business related.

The first group is the so-called 'persons' companies (one man business/partnership) in which we know companies with a sole owner (eenmanszaak) and companies with several natural (private) persons involved (vennootschap onder firma short VOF).

For the persons (private) companies the natural (private) persons are fully liable (also in their private assets) for debts.

The second group is the limited company: legal person/legal entity, commonly BV and NV. For these companies the partners cannot be held responsible for company's debts.

20.7 Insolvency procedures

In the Netherlands there are three types of insolvency procedure:

- Bankruptcy (faillissement)
- Suspension of payment (surséance van betaling)
- Law enforced composition with creditors for natural persons debts (WSNP).

20.7.1 Bankruptcy

All debtors (natural persons included) can be declared bankrupt on the request of just one creditor, provided that evidence is supplied to the Court that more than one debt is left unpaid by the debtor. The procedure of filing a petition for bankruptcy is

described earlier.

If the debtor does not take care for payment of the claim from the creditor(s) who filed the petition and there is another debt left unpaid, the Court will declare the debtor bankrupt and will at the same time appoint an official receiver, as well as a member from the Court who will monitor the official receiver. In fact there are no rules prescribing a debt has to be of a certain amount, but of course the debts have to be of a reasonable amount (> EUR 1500).

The official receiver will act on behalf of the creditors and can implement several (business) actions with approval of the member of the Court, to liquidate the assets in favour of the creditors. If there are monies reserved by the official receiver, it might come to a composition with creditors especially in case of natural persons with consent of the Court.

If limited companies are declared bankrupt, the creditors might receive a final dividend. In most bankruptcies however the unsecured creditors will not receive any dividend. With a composition and or dividend, as well as in the case that no monies could be reserved, the bankruptcy proceeding will end. Depending on the assets to be liquidated the settlement of bankruptcy proceedings might take 1 to 5 years.

20.7.2 Suspension of payment

Companies and or natural persons who come temporarily in a position that they are not able to pay their debts might file a petition for suspension of payment. The Court often allows such a suspension provisional for a certain period (2 – 6 months), after which the debtor has to submit all records about the financial situation, as well as a plan towards the future and the way to meet obligations towards creditors.

If it is judged that there are possibilities to come to positive results in future, including a payment plan for the debts, the suspension will become definitive. Also it is possible to come to a composition with creditors, which then has to be approved by the majority of creditors in relation with the amount of each debt and the Court. With a payment plan approved by the Court or a composition the suspension will end. In general however a lot of suspensions will turn in the end into a bankruptcy.

20.7.3 Law enforced composition with creditors for natural persons' debts (WSNP)

This insolvency procedure is related to natural persons (owners of small shops, farmers etc.) who are personally liable for debts. Dutch Law provides such debtors the possibility to request the Court to be allowed to the WSNP. Fulfilling certain obligations as towards good faith, the Court can allow such debtors to the WSNP by appointing a kind of official receiver, monitored by a member of the Court.

The official receiver has to determine which capacity the debtor has to pay instalments for a period of three years. After this period and provided that the debtor did meet his obligations as agreed with the official receiver, the total reserved amount will be divided amongst creditors in full and final settlement.

It should be noted that if a natural person has been declared bankrupt it often comes – on request from the debtor -to a transfer to the WSNP. Most of the time the creditors will receive just a small percentage of their debts (varying from 3 to 10%).

21. Poland

21.1 Dispute

There are three methods of out of court debt collection in Poland: mediation, settlement and arbitration.

21.1.2 Mediation

Mediation is a form of negotiating with debtors and a professional mediator. This is an impartial person with proper qualifications who seeks to adjust the contentious positions of the parties and tries to find a compromise that satisfies both parties and results in an agreement. The task of a mediator is to determine the essence of the dispute, point out its most important aspects and the possibilities for amicable settlement. Either party can terminate the process of mediation at any moment without any negative consequences.

Mediation proceedings are confidential and no negotiations, proposals, promises, behaviour or statements made or performed during mediation can be used in court or arbitration proceedings concerning the dispute under mediation. The mediator cannot be asked to be a witness in court either. Although it can shorten the duration of disputes before court, mediation is not very popular in Poland.

The main reason for this situation is that mediation has existed in Polish law only from December 2005. Also, the mediator fee was also settled in the Act and for court mediation it is calculated as 1% of claim value but not higher than 1000 PLN (about 250 EUR). This meant that price is too low to have experts in such proceedings. It is very important that afterwards commercial Court approves the agreement resulting from mediation proceedings so that the agreement could be treated as the enforcement title.

21.1.3 Settlement

According to the Polish civil procedure, it is possible to call the debtor to enter into a settlement. The settlement can be entered into prior to filing an action to court. The application for calling upon the parties to enter into a settlement, irrespective of the dispute subject, may be filed with a local competent court, responsible for the debtor territory jurisdiction. The application should briefly describe the case.

Within Atradius we're using this opportunity to deal with dispute cases, also because of low court fee – 100 PLN (about 25 EUR) instead of 5% of claim value in regular court proceedings. The attempt of court settlement interrupts the limitation period, even if it is unsuccessful.

21.1.4 Arbitration

The third solution is arbitration conducted on the basis of the arbitration clause in contract/terms and condition or agreement with debtor. Unless any special regulations state otherwise, the parties may submit any disputes for settlement in arbitration, except for alimony cases.

Submission of a dispute for arbitration requires an agreement of the parties specifying the subject of the dispute or the legal relationship triggering the dispute. The settlement concluded by arbitration court has to be approved by the commercial court and then after granting an enforcement clause, can be treated as the enforcement title.

21.2 Documents required

21.2.1 Amicable process

- Statement of account with all requested invoices and partially made payments. In Poland there is nothing like a “globalised invoice”. This information is not valid either from business or legal point of view
- Name of actual supplier, if the client is a factoring/financial company
- a POA has to be delivered only if debtors request it
- Originals of invoices (not scanned copies) if the debtor has not received them. Scanned copies cannot be printed and delivered -it has to be the original documents, sent by client.

21.2.2 Legal processes

Invoices signed by the debtor with proof of the delivery of the goods, (regarding to sale transactions invoices must not been older than 2 years from invoice requirement due date).

Also it is useful if the client can provide us with the document (by post) confirming that the invoice has been delivered to the debtor. This allow us to start simplified proceedings (if there were no complaints)

- Confirmation of the debt signed by the debtor (if it was)
- Contracts between parties with terms and condition of contracts
- Order made by the debtor in writing
- Confirmation of order by the creditor
- Document confirming disputes
- Correspondance between parties
- Fulfilled and signed POA (always in attachment) signed by the people entitled to represent the client company
- Current (maximum 2 months old) extract from creditor trade registry which statue person(s) which has the rights to represents Creditor company and sign power of attorney
- Transport documents (CMR, WZ)
- Extracts from creditor bank account that confirms payments made by debtor (if there were any).

In Poland it is possible to proceed in legal processes with copies of some documents (law allows lawyer who runs this case to sign copies). The crucial point is that the signature of person/people on POA is the same as mentioned in Extract from Client Trade Registry -without this, the lawyer and court will reject our legal action (for formal reasons).

21.3 LDC

AC Poland co-operates with professional law firms in Poland, which employ lawyers experienced in judicial collection procedures. Consequently AC Poland ensures professional legal service at all levels of legal proceedings before any Court in Poland.

21.4 Other actions

AC Poland is able to evaluate the debtor's financial situation and the possibility of collecting the money owed, allowing us to make a clear and complete view of the debtor's financial situation. Accordingly, we can start the most suitable debt collection activity to maximise the result of the debt recovery. The investigation of the debtor's assets includes public registers research, financial report research, real estate and research on other fixed assets.

21.5 Interest & debt collecting costs

AC Poland recharges debtors with the accrued interest resulting from the rules of Polish Civil Code (currently, the rate is 13% per year). The interest is almost always claimed, both in amicable and in judicial phase. Nevertheless, there is room for negotiation between debtors and collectors.

AC Poland may request the client's approval concerning collecting the interest. In such cases, we may ask the Client to provide us with an 'Interest Note' (on debtors request). It is often customers not to ask for interest after the principal amount has been paid in full.

Polish law doesn't include the costs of debt collecting, with the exception of legal costs. Yet, in contract with debtor, the client may conclude penalties, which could also be collected.

21.6 Miscellaneous Information

Out of court actions are less expensive and faster than the legal actions commenced in court.

21.6.1 Legal Actions (Type and Costs)

21.6.1.1 General Procedure Before Business Court

It is obligatory to send a call for payment to the debtor before starting legal action in court. It is not obligatory to send the call for payment by a lawyer. There is a separate procedure for cases in which both parties of the dispute are entrepreneurs (companies or natural persons conducting business activity). These types of cases

are reviewed by special departments of court, i.e. business court.

Commercial Courts work faster than ordinary Civil Courts, yet the parties still have to wait some time before the judgement is granted.

However, even though the waiting time for a judgement in business courts is shorter than in civil courts, it can still take a few months (in big cities).

Usual period from sending file to the court to start execution with the bailiff if the debtor hasn't appealed is 2-5 months.

Law offices cooperating with AC also provide legal procedures in front of E-Court in Lublin. This kind of legal procedure was established in 2011 to receiving Court decision faster than in ordinary Court hearings. The period from sending the petition to receiving verdict is usually between 5-14 days. All undisputed cases, unless lawyer or contractual provisions doesn't show other competent court, are running in e-court proceedings.

Key Requirements Concerning Evidence

The most important issue in proceedings before the business court is that the creditor is obliged to specify, in their action, any and all claims with supporting evidence, otherwise the claimant may be deprived of the right to refer to such claims and evidence during the proceedings unless it is proven that the specification in the statement of action was not possible or that a need to refer to certain claims and evidence arose at a later stage, i.e., after filing the action.

The claimant should attach a copy of the complaint or a request for voluntary performance and a statement on the position of the defendant in the case, as well as information or copies of letters certifying the attempts to settle disputable aspects through negotiation. In general, the claimant bringing an action to court has to submit all documents and other proof concerning its liability.

21.6.1.2 Injunction Procedure

According to the Code of Civil Procedure, the creditor can file the action in the proceedings for writ of payment. Courts can issue the writ of payment only on the basis of the documents attached to the statement of action without of any court sitting.

The documents that should be attached to the action include, but are not limited to, e.g. the agreement between creditor and debtor concerning payment, debt recognize signed by debtor, the invoices accepted by the debtor – signed and stamped, proof from post office that invoices were delivered to the debtor.

The Court can also grant the writ of payment with an attached agreement, proof of fulfilment and proof of delivery to the debtor of an invoice. This procedure makes the debt collection easier for the creditors and is faster – the court should issue the writ of payment within one to three months but if the debtor lodges an objection, the case will be examined in the ordinary procedure. The procedure is cheaper for the creditor as the court fee is 1.25% of claim value, but also the procedure of appealing is expensive for the debtor – if they appeal they have to pay the court fee as well.

21.6.1.3 Writ proceeding (postępowanie upominawcze)

If the client can provide us only with invoices, proof of delivery/CRM, statement of account, POA and extract from trade registry (but there is no debt recognised and debtor hasn't signed invoices) we may proceed with the writ proceedings. Also within this procedure, after checking all documents from formal point of view, the court will issue writ of payment without a court hearing.

This procedure is more expensive for the creditor (court fee is 5%), debtor doesn't have to pay court fee if they appeal and if any appeals arise, the case is transferred to common court for ordinary procedure. If the Court gives final verdict 75% of court fee is returned to the Creditor.

21.6.1.4 Summary Proceeding

If the value of the subject of the litigation is less than 10000 PLN (approx 2400 EUR) or if the action concerns residential rent, the case will be adjudicated in the summary proceeding. This proceeding is more formal than General Procedure Before Business Court and the action has to be brought on the official form.

21.7 Court Fee

The cost of bringing the action before court depends on the value of principal claim without interest, which amounts up to 5% of this value. These costs can be collected from the debtor if the claimant wins the case, but also the courts returns 75% from the court fee if the case is won by the claimant. If the case is considered in the summary proceeding, there is a flat rate fee depending on the value of principal claim.

21.8 Power of Attorney

According to Polish law, it is possible to grant a power of attorney to represent the creditor before Court. It means that for each action the petition has to be signed by the authorised plenipotentiary (agent) of the creditor. The authorised plenipotentiary can only be the attorney-at-law or the legal advisor.

It is possible to grant the general Power of Attorney with full power of substitution for the purpose of representing the creditor before the court. The general power of attorney entitles the agent to represent the creditor in all kinds of legal actions. It is also possible to grant the specific, limited, power of attorney to the specific legal case.

The power of attorney for representing the creditor before Court entitles the authorised plenipotentiary e. g. to take all legal actions connected with the case, including lodging the appeal, concluding the court settlement and taking all actions in the execution procedure except receiving the amount enforced by the court debt collector. It is necessary to obtain the specific power of attorney to receive the debt in the collection procedure.

21.9 Execution of Judgement

According to Polish law, a collection procedure, carried out by a court debt collector (bailiff), requires the so-called enforcement title. The court grants an enforcement clause to the collection title.

A collection title with the enforcement clause is referred to as the Enforcement Title.

It should be noted that there is a long way between obtaining an enforcement title and practical collection of the debt. It is necessary to find a bailiff, to file an application to the bailiff for commencement of collection and to specify assets of the debtor, if possible. The collection procedure can be carried out in different methods.

Quite an easy way to collect the debt is collection from the debtor's bank account. It is also possible to collect the debt from the debtor's remuneration or the liabilities of the debtor. In the case of the execution from the remuneration there is the limitation of the maximum amount, which can be collected from the monthly remuneration. The bailiff can collect only the amount above the minimum monthly remuneration i.e. 1126 PLN (approx 275 EUR) gross.

In the case of collecting the debt from liabilities, there is no limitation of the amount. It is also possible to collect the debt from personal property, but this is a longer way of collecting debts. The bailiff can also carry out the execution from the debtor's real estates. It is the longest and most expensive way of execution. The bailiff may charge the creditor with the costs of the actions, which the debt collector is going to take during the enforcement procedure. Finally, the debtor is recharged with all costs of the collection procedure.

21.9.1 Collection Costs (Charged to DB)

A creditor filing an action to Court is obliged to pay a court fee. There are three main types of court fees: flat rate fees, proportional fees and basic fees. The type of fee depends on the object of the action. In the case of actions for payment, the creditor has to pay the proportional fee.

21.9.2 Fees -General Procedure Before Business Court

The proportional fee is 5% with respect to monetary suits (not less than PLN 30 and no more than 100000 PLN (approx. 7 to 24.000 EUR). The court fee must be paid before filing an action to court and the proof of payment must be attached to the statement of action. If the action is filed by a professional proxy (an attorney or a legal advisor) or in the case between entrepreneurs by the entrepreneur self without the required court fee, the action will be rejected by court.

21.9.3 Fees – Injunction Procedure Payment

If the case is considered in the proceedings for the writ of payment, the fee is 25% of the proportional fee mentioned above, not less than PLN 30 (1.25% of claim value)

21.9.4 Fees – Summary Proceeding

If the case is considered in the summary proceeding (if the value of the subject of the litigation is less than 10 000 PLN (approx 2.400 EUR) there is a flat rate fee and the amount of fee depends on the value of the subject of the litigation:

- | | |
|---|---|
| A | Up to PLN 2.000 – 30 (approx 7 EUR) |
| B | From PLN 2000 to PLN 5000 -PLN 100 (approx 25 EUR) |
| C | From PLN 5000 do PLN 7500 – PLN 250 (approx 60 EUR) |
| D | Above PLN 7500 – PLN 300 (approx 75 EUR) |

21.9.5 Lawyer fees

Lawyer fees and fixed and depend on claimed amount (principal amount, without interests):

- To 500 PLN — 60 PLN;
- Above 500 PLN to 1 500 PLN — 180 PLN;
- Above 1 500 PLN to 5 000 PLN — 600 PLN;
- Above 5 000 PLN to 10 000 PLN — 1 200 PLN;
- Above 10 000 PLN to 50 000 PLN — 2 400 PLN;
- Above 50 000 PLN to 200 000 PLN — 3 600 PLN;
- Above 200 000 PLN — 7 200 PLN.

Finally, the debtor is recharged with all the court procedure costs in the sentence.

21.9.6 Statute of Limitation (Prescription of the Debt)

In general, a creditor or debt collector gives up his right to file a suit to collect a debt after a period of three years from the due date of the debt. This term concerns the debt of the entrepreneurs.

But debts under the sales contracts become prescribed within two years. Different terms concerns transport invoices – it is only one year. The longest, 3 years limitation period is for foreseen for services with periodic invoicing (renting, phone, internet etc).

Limitation terms can be also The Polish Civil Code defines the specific terms of the statute of limitation of debt depending on the type of the contracts. After the expiration of the statute of limitation the creditor can file against the debtor.

However, if a creditor or debt collector does file a suit, the debtor can ask the judge to dismiss the suit on the grounds that the statute of limitation has expired.

According to Polish law, it is possible to suspend the limitation period, if the creditor cannot take the action to collect the debt and interrupt the limitation period by any action of the creditor before Court or in the case of receiving the acknowledgement of the debt, signed by the debtor's representative person.

Expected Time Frame (1–10 years)

Altogether, the court proceedings last from 1 month to about 1 year. It depends on the object of the action. As indicated above, it is possible to file the suit in the simplified procedure if the creditor has the specific documents as the evidence of the claim.

For example, it is necessary to disclose the agreement between the parties of the court dispute, the orders, the signed invoices, the proof of supply of goods or services, the correspondence between the parties of the court dispute concerning the claim, etc.

If collection by bailiff failed it is possible to re-start enforcement procedure within next 10 years.

21.10 Miscellaneous Information

21.10.1 The Collateral Proceeding

It is worth mentioning that, irrespectively of the nature of the claim, the court can establish the collateral for the benefit of every participant of the proceedings applying for it.

The mover should convince court that the claim to be secured may be justified and must indicate the legal interest in setting up the collateral. The application for establishing a collateral should be examined immediately, no later than a week, which should prevent obstructing the enforcement and must facilitate payment of the receivables.

21.10.2 The Insolvency Proceeding

There are two types of bankruptcy: insolvency with liquidation of debtor's assets and insolvency with a possibility of arrangement. Bankruptcy can be announced when the debtor fails to pay debts as they fall due or when the total amount of the debts exceeds the value of the debtor's assets, even if the entity still pays all of its liabilities. Creditors or the debtor may file for bankruptcy of the debtor.

Every creditor of an insolvent entrepreneur (company) should file the claim to his/her receivable in writing. It is unnecessary to attach the documents confirming the receivable, e.g. the agreement, the invoices, orders, statement of account etc. to the claim.

Upon completing the list of liabilities, a plan is drawn up for the distribution of debtor's assets. It specifies the sum to be distributed, the list of all liabilities and the amount due to every creditor. Liabilities are paid in a specific order. For example: tax and other public duties are paid first, together with employee salaries.

Also secured Creditors (with mortgage) will receive the payments earlier. The duration of the bankruptcy proceedings depends on many factors: the amount of the creditors, the debtor's assets, etc and it takes at least one year.

Instead of liquidation, the bankruptcy proceedings may be finalised by an arrangement between the debtor and its creditors.

The debtor, supervised by court, is entitled to restructure his/her debt if there is reasonable doubt that in the near future the debtor will be unable to pay all his/her financial obligations, despite currently being able to pay his/her debts.

Under this mechanism, the debtor has to prepare a restructuring plan regarding

his/her debt, assets and employees. If the restructuring plan is approved at a meeting of creditors, the debtor will be exempt from the obligation to pay its debts for a period of time, in order to improve its financial situation and to avoid liquidation.

Costs of claim lodging by lawyer is fixed: 1800 PLN (about 450 EUR).

22. Portugal

22.1 LDC

Once we have tried all the amicable recovery actions and amicable recovery is not possible we analyse if it is possible to file a law suit and if so we send the case to an LDC.

Currently we are using the Atradius lawyers as well as CyC lawyers. To establish whether it is wise start a procedure, we evaluate if it is worthwhile regarding the amount of debt in relation with the amount of costs and time. We also start to value the debtor's solvency and activity. If a debtor is not trading nor has any assets, it makes no sense to prepare for a possible legal action.

Required documents:

- 1) Power of attorney
- 2) Invoices copies
- 3) CMR or B/L or AWB
- 4) Original cheques or bills of exchange issued by the debtor
- 5) Any document signed by the debtor in which he acknowledges the debt, e.g. a payment agreement.

22.2 Other actions

22.2.1 Interest

In Portugal in the amicable phase, interest is not claimed, only after legal proceedings.

22.2.2 Legal actions (type and costs)

Once we have decided to go legal, we determine which kind of legal procedure would be best to claim the debt. There are two types:

22.2.2.1 Injunção (simple claim)

We normally use this kind of legal procedure for non disputed debts. It is faster and less expensive.

22.2.2.2 Acção Ordinária (claim)

We normally use this legal procedure when we expect strong opposition from the debtor. If the court issues a favourable judgement, we can execute.

22.3 Collection costs

22.3.1 Power of Attorney

In order to start the legal actions, we prepare a draft of Power of attorney that the client has to sign. A Public Notary's involvement is not requested in Portugal, so it just needs to be signed by the client and printed on their paper.

22.3.2 Execution of the judgement

If the debtor does not pay voluntarily after judgement from the Court has been announced, we have to file a new legal procedure: the Execution Proceeding. This kind of procedure carried by an execution agent and is needed for attaching the debtor's assets. Unfortunately, we cannot calculate beforehand what the costs are, as the fees of an execution agent depend on the amount of work that has to be carried out.

22.3.3 Expected Time Frame

A minimum of 6 months (just 3 months to giving a summons), for the procedure, depending from whether or not the debtor is rapidly served.

22.3.4 Statute of Limitation

According to Portuguese law, there are two prescription periods regarding the invoices covering the supply of goods:

The ordinary delay, which is of 20 years (article 309 of the Civil Code) and the delay of 2 years, which is only applied to the traders' credits resulting from goods sold to non-traders (article 317 of the Civil Code).

22.4 Insolvency procedures

As soon as we are informed that debtor has applied for insolvency and once we know the insolvency procedure's data, we usually prepare the draft of the writ that our client must complete, sign and send to court. We send this writ by mail to the client with the instructions to lodge the credit. Sometimes, we also entrust our external lawyer to do so. We cannot lodge credits on behalf of our clients as a specific power is required in Portugal to act on behalf of other person or company and in Insolvency Procedures there is no time for getting this Power.

22.5 Types of companies

The common types of companies operating in Portugal are:

Sociedade por Quotas or LDA (Limited Society) – the minimum corporate capital for setting up it is 5000 EUR.

Sociedade Anónima or SA (Business corporation) - the minimum corporate capital for setting up it is 50000 EUR.

23. Romania

23.1 Legal

Once we have carried out all the amicable recovery actions and we have to conclude that an amicable recovery is not possible, we analyze if it is possible to initiate a legal action based on the case documentation.

As the legislation stipulates a creditor may be represented within a court only by a lawyer, we concluded contracts with lawyers specialized in commercial law. Based upon the documentation provided by the creditor we assess the chances of a legal action, we choose the most efficient procedure and estimate if it is financially wise to go this way based on the debtor's solvency, activity and judicial history.

If a debtor is not trading nor has any assets, it makes no sense to consider legal action.

To start legal action, regardless the applicable procedure, we need the following documents:

- The original copy of the Power of attorney legalized by a Notary Public and sealed with Hague Apostille (applicable for EU member states)
- The certified copies of the following available documents
 - Invoices
 - Contract, if any
 - Orders
 - Delivery notes
 - Promissory notes, cheques or bills of exchanging, if any
- Current statement of accounts
- Correspondence between the parties
- Any other document which could prove or recognize the debt

23.2 Interest

The interest cannot be claimed in the amicable phase unless it is stipulated clearly in the contract and there is an issued invoice for it. In the legal phase the interest can be claimed according to the National Bank regulations and cannot be denied by the debtor.

The law also says that the legal interest in international commercial contracts is 6%

23.3 Legal actions (type and costs)

Once we have decided to start legal proceedings, we chose the kind of legal procedure that would be best to claim the debt. The choice is between:

23.3.1. Common law procedure

The civil procedure code allows a creditor to choose this procedure and get an executor title to enforce, if the debt owed by is not obvious and the judge must assess if its claims are grounded or not.

If the judge decides the claims are grounded, he will issue a sentence that will bind the debtor to pay the debt.

This kind of litigations can be judged, in this stage, by two kinds of courts:

- Court of justice, for claims up to 100.000 RON
- Tribunal, for claims above 100.000 RON or cannot be evaluated

This procedure is expensive, as the duty stamp is calculated as a percentage of the debt amount, and time consuming as the following steps must be done:

- To perform the prerequisite conciliation procedure (litigation amicable solution)
- To file the application for legal action by enclosing the proving documents, followed by the parties summoning
- To provide proofs in order to clear up the situation and reject the debtor's counter arguments
- To solve applications, exceptions and procedure incidents;
- To decide the sentence, to draw it up and to communicate it to the parties
- If there is an appeal against the sentence, the file must be sent to the appeal court and the parties must be summoned to the new court;
- To judge the appeal cause, to draw up and communicate the sentence of the appeal
- If there is an appeal against the sentence, the file must be sent to the appeal court and judged.

The duty stamp for the appeal court is half of the one paid in the first court.

23.3.2 Payment injunction procedure

This is a special legal action that provides a simple and fast way to get an executor title according to the pattern provided by the French and German civil procedure codes.

This procedure is applicable only to undisputed, liquid and exigible claims that represent a payment obligation assumed by contract, established by a written document or determined according to a legal status regulated by a written act that is accepted by parties under signature, or any other way conceded by law that proves rights and obligations concerning the performance of services, works or any other kind of similar performances.

In case the court assesses the conditions not being fulfilled according to the procedure, it rejects irrevocably the creditor's application, which has the right to initiate a common law procedure.

The advantages of this procedure are:

- A simplified and accelerated procedure, which limits the debtor's attack chances
- A fixed amount duty stamp, which facilitates the creditor's access to the court
- The prerequisite conciliation procedure is not necessary, which saves time
- If this procedure is continued by a prerequisite conciliation procedure, the prerequisite conciliation procedure is not necessary
- The required proofs are limited, namely written documents

23.3.3 Insolvency procedure

The insolvency procedure is a special procedure meant to protect both creditors and debtors. It provides to the debtor the protection against persistent creditors in order to recover and pay all creditors.

It also provides to the creditor a pressure lever to make stubborn debtors to pay before the procedure is opened or to stop dishonest debtors hiding assets and liquidities in order to appear to have no financial resources and to avoid payments by freezing the debtor's financial situation and having access to its bookkeeping.

The legislation's intention to solve companies in difficulty, is sometimes driven to the direction meant by the creditor or by the debtor, depending on which party started it, but the law is a two way road on which both parties may go.

This procedure has strict rules, which makes it understandable for participants, has a fixed amount duty stamp, which makes it accessible, runs slowly and takes a long time until its end.

It is usually opened as a general form procedure and can pass through two possible stages:

- Business reorganization plan, when the debtor has actual chances to recover but needs time until being able to pay
- Bankruptcy, when the debtor has no wish or financial resources to recover and the liquidation remains the only way to pay the creditors, at least partially

The main players in this procedure are:

- The creditor
- The debtor
- The syndic judge
- The judicial administrator (trustee)
- The creditors' general meeting
- The creditors' committee

The creditors' general meeting is convoked any time the judicial administrator must take a decision regarding assets sale or significant expenses according to the

procedure course. The creditors' general meeting decision is submitted to the syndic judge for validation.

The creditors' committee is the executive body during general meetings that takes less important decisions, generally for operational purpose.

Practical experiences has shown that normal procedures, procedures dominated by the banks, business reorganisation plans stopped and turned into bankruptcies, a.s.o.

Our opinion is that the participants experience developed considerably, especially due to the global financial crisis that dramatically increased insolvency levels prompting banks to become more flexible in accepting business reorganisation plans. Insolvencies are driven to the intended direction and is of benefit to all parties.

23.3.4 Preventive concordat procedure

This is relatively a new procedure, valid since February 2010 and is used more and more since experience has grown. It is meant to prevent insolvencies has a limit period of 18 months. If during this period the debtor succeeds in paying all creditors, the debtor will continue its activity normally. If not, an insolvency procedure will be started.

23.4 Collection costs

Collection costs in legal procedure is the court fee and lawyer fee. Atradius Collections can provide one fixed amount of lawyer fee. Court fees will be always calculated and given for acceptance of Client.

23.4.1 Power of Attorney

Once the decision is made to start legal proceedings, lawyers prepare a draft of Power of Attorney that the client has to sign before a Notary Public and which is sealed with the Hague Apostille.

The POA often needs be translated into Romanian and legalised by a Notary Public, together with the other documents. The costs for translation and legalisation depends on the volume of documentation as the fee is calculated per page.

23.4.2 Execution of sentence (enforcement procedure)

If a debtor does not pay voluntarily after receiving the judgment sentence from the court, whether it is been issued within one of the above mentioned proceedings, we have to file for a new legal procedure: Forced Execution Proceeding (enforcement).

This kind of procedure is needed for attaching the debtor's assets or banking accounts and is performed only by a legal executor, which can be a person or a specialised office.

The costs and time involved depend on the debtor's assets. If a debtor has a lot of assets and we have to order a lot of attachments, it will be more expensive than if the debtor has no assets.

There is the legal possibility to enforce a sentence issued by a foreign court against a Romanian debtor, because since Romania is a state member of the EU, a legal action can also be judged in the creditor's country, as a member of the EU.

The sentence is subject of a special procedure, which recognises its validity and empowers it with an executor title. The sentence follows the same course as a domestic one.

23.4.3 Expected Time Frame

- Common law procedure: 1-4 years
- Payment injunction: 45-60 days
- Insolvency procedure: 1-4 years
- Preventive concordat procedure: 18 months
- Execution: 6-12 months

23.4.4 Statute of Limitation

According to the Romanian law the prescription period is 3 years. Any partial payment during this period extends the prescription period by another 3 years.

If the creditor's country is a member of the New York Convention, the prescription period can be extended to 4 years under the condition if the court admits it.

23.5 Types of companies

According to the Companies Law, there are 5 types of associative organisations, which are defined by their essential characteristics:

a) The Romanian "Collective-name Company" – "Societatea in nume colectiv"
Its social obligations are patrimonial guaranteed by the social capital and the unlimited liability of all associates. The Articles of Association (Articles of Incorporation) of this type of

Romanian company shall contain among other information:

- The ID data of shareholders, form, name, company office address (main headquarters) and secondary office addresses;
- Social Shares (social capital);
- Duration of the future company in Romania;
- Modality of liquidation.

b) The Romanian "Sleeping Partnership Company" – "Societate in comandita simpla"

Its social obligations are patrimonial guaranteed by the social capital and by the unlimited liability of the associates – the associates of this type of Romanian companies are only liable to the limit of their contributions.

Besides usual information contained in the Articles of Association (such as identification data of associates, social shares etc.) there are the following specific characteristics of this Romanian company:

There is no required minimum amount for the social shares, the number of associates is not foreseen in the incorporation documentation, this being left for the decision of the founders.

The administration of a Romanian “Sleeping Partnership Company” will be the responsibility of one or more associates, (“asociatii comanditari”) who can only operate in behalf of the company through a Power of Attorney made out for determined operations and registered at the Romanian Trade Register.

c) The Romanian “Partnership Limited by Shares” Company – Societatea in comanda pe actiuni”

Its social capital is divided into shares and the social obligations are patrimonial guaranteed and by the unlimited liability of the associates.

This type of Romanian company has the same legal requirements as the Romanian “Sleeping Partnership Company” regarding the Articles of Association, and pertaining the social capital this must be (as in the case of a Joint-Stock company) of 25,000 Euros or the equivalent of 90,000 RON.

d) The Romanian Joint-Stock Company – “Societate pe actiuni”

Its social obligations are guaranteed by the social capital; the shareholders are only held liable for their actions.

There are certain requirements for information contained in the Articles of Association, respectively: the nature and value of the goods contributed in nature as well as the person who contributed them must be inserted, the number and nominal value of shares, as well as whether they are nominal or bearer shares etc.

Other specifics of Joint-Stock companies in Romania are: the limit of at least 2 associates, their deliberative institution is the General Assembly, which can be ordinary or extraordinary, the number of administrators is an Joint Stock is always odd, it can be administered either in a unitary system or a dualist system etc.

e) The Romanian Limited Liability Company – “Societate cu raspundere limitata”

The minimum social capital of a SRL company in Romania is 200 Lei and there is a maximum of 50 shareholders. One other characteristic is that any person or legal entity (Romanian or foreign company) can only be sole shareholder in one company.

24. Singapore

24.1 Amicable phase

Upon receipt of collection cases from client, a reminder is sent to the debtor and telephone calls will be made to see if the debtor wants to settle the debt amicably, or if there is a genuine reason for the delay or non-payment. Visits to the debtor's premises may be necessary in some cases in order to make a stronger demand for a settlement at a certain date. It clarifies the debtor to notice that legal actions will be taken in case of non-payment.

For debts that are to be collected in AC Singapore's footprint countries, the standard process is to attempt collections from Singapore until efforts have been exhausted. After which, cases may be forwarded to local LDCs for their assistance.

24.1.1 Dispute

A dispute is often one of the main reasons why an invoice remains unpaid. We advise creditors to make their debtors provide the proof to support the dispute. Together with the client we can then analyse it and plan the next course of action accordingly.

It is necessary to make an exhaustive review of all debt documents that the client has provided before making recommendation on whether to proceed with legal action against the debtor.

24.1.2 LDC

Singapore is the host country for collections in most parts of Southeast Asia, including Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines and Thailand. AC Singapore has the engagement of experienced and dedicated local agents and law firms in the judicial credit collection activity.

The local agents will visit the debtors whenever necessary in their attempts to collect your money. They will also make recommendations on the next course of action that is appropriate for the case, e.g. to conduct a search on the untraceable debtors, litigation, etc.

24.1.3 Interest

In the amicable phase, interest is not collectable unless it is contractually agreed upon that the rate of interest is applicable on the overdue invoice(s).

24.1.4 Types of companies

The types of business organisations that can be registered in Singapore are:

24.1.4.1 Sole proprietorship & Partnership

Any individual can start his own business by registering with the Registrar under the Business Registration Act. Up to a maximum of twenty persons can operate a business as a partnership. A partnership must also be registered with the Registrar.

24.1.4.2 Companies

Any two or more persons can form an incorporated company by registering under the Companies Act. A company can be limited by shares, limited by guarantee or can be unlimited. The three main types of companies in Singapore are:

- Private limited companies
The number of shareholders is limited to fifty or less.
- Public companies
The number of shareholders is more than fifty and the company can raise capital by offering shares and debentures to the public. A public company must register a prospectus with the Registrar before making any public offer of shares and debentures.
- Foreign companies
Companies incorporated outside Singapore and that wish to set up a branch in Singapore, must be registered as foreign companies under the Companies Act.

24.2 Legal phase

24.2.1 Legal system

The legal system in Singapore is a legacy of the British Colonial rulers. The Courts in Singapore use statutes, which were adopted from the United Kingdom and modified to suit the local circumstances. Very often, cases reported in the Courts in the United Kingdom are also relied upon by the Singapore Courts.

24.2.1.1 Court structure and jurisdiction

The basic Court structure comprises the Supreme Court and the Subordinate Courts.

24.2.1.2 The Supreme Court

The Supreme Court consists of the High Court and the Court of Appeal. In civil matters, the High Court has jurisdiction where the Defendant is served with a Writ or other originating process in or outside Singapore in the manner prescribed by the Rules and the Defendant submits to jurisdiction. All civil claims in excess of 250000 SGD must be brought in the High Court. There is no upper limit on the quantum of the claims that can be brought in the High Court.

The Court of Appeal hears appeals from decisions made in the High Court. There are no further appeals from the decisions of the Court of Appeal.

24.2.1.3 The Subordinate Courts

The Subordinate Courts comprises the following Courts:

- District Court
- Magistrates' Court
- Small Claims Tribunal

Claims above the sum of 60000 SGD up to the sum of 50000 SGD are heard by District Court. Claims of the sum of 60000 SGD and below are dealt with by Magistrates' Court.

24.2.1.4 Small Claims Tribunal

The Small Claims Tribunal is set up to simplify the collection of small debts in an informal atmosphere. Advocates and solicitors are not allowed to appear before the Small Claims Tribunals and the parties must represent themselves.

It may handle claims not exceeding 10000 SGD or, subject to written agreement by the parties, claims not exceeding 20000 SGD. However, the Small Claims Tribunal can only hear and determine any claim if it is made within one year from the date on which the cause of action accrued and the claim relates to a dispute arising from any contract for the sale of goods or the provision of services; or is a claim arising from any contract relating to a lease of residential premises not exceeding 2 years; or is a claim in tort in respect of damage caused to any property, except damage in connection with a motor vehicle accident, or a claim which the Subordinate Courts have no jurisdiction to hear.

24.2.2 Process

A civil action can be commenced by Writ of Summons or Originating Summons. Where there are substantial disputes on fact, Writ of Summons is the more appropriate method.

Originating Summons is usually employed where the action merely involves the construction of a statutory provision or the effect of a legal instrument, e.g. a deed, will, contract, or other document. The most common mode of originating process is the Writ of Summons since most disputes involves disputes of fact.

24.2.3 Writ of summons

The Plaintiff (Claimant) brings an action by issuing a Writ of Summons containing details of the parties and a brief Endorsement of Claim, or a full statement of the claim. An Endorsement of Claim sets out only a concise statement of the cause of action and the reliefs claimed by the Plaintiff.

24.2.3.1 Memorandum of appearance

Once the Writ of Summons is filed in Court and served on the Defendant, he is required to enter an Appearance within 8 days of the service of the Writ of Summons. The Appearance is a document filed to indicate that the Defendant intends to contest the Plaintiff's claim.

If the Writ of Summons contains only an Endorsement of Claim, the Plaintiff must file and serve a proper Statement of Claim within 14 days from the date on which the Defendant files and serves an Appearance on him.

The Defendant has 14 days from the date on which the Statement of Claim was served on him to file and serve his Defence. If he intends to make a counterclaim against the Plaintiff, he would then file a Defence and Counterclaim.

Failure to enter an Appearance will allow the Plaintiff to enter Judgement in Default of Appearance against the Defendant.

24.2.3.2 Summary judgement

Where a Plaintiff has such a strong case that there are no real issues of fact to be determined at the trial, it would be unfair to compel the Plaintiff to go through the entire process up to trial to obtain judgement on his claim. He can in such circumstances apply to Court for Summary Judgement on the grounds that the defendant does not have a valid defence to his claim.

An application for Summary Judgement should be taken up after the debtor has filed and served his Appearance and preferably before the defendant files and serves his defence on the claim. The application should be accompanied by an Affidavit by the Plaintiff setting out the facts which form the basis of the Plaintiff's claim. The debtor has 21 days from the date of service of the Plaintiff's Affidavit to show cause by way of an Affidavit why judgement should not be granted against him. The Plaintiff can file an Affidavit in reply to the defendant's Affidavit within 14 days of the service of the defendant's Affidavit.

At the hearing, the registrar will give Judgement to the Plaintiff if the defendant is unable to show that there are triable issues, i.e. issues of fact or law which ought to be determined by a judge at trial. If the registrar determines that there are triable issues, then the debtor will be given unconditional leave to defend the claim and the matter will be remitted to trial.

24.2.4 Power of attorney

If a client intends to pursue legal actions in Singapore, a representative must be legally appointed to act on its behalf through a formal power of attorney. Some of the basic requirements of a Power of Attorney include: Certification and attestation by a Notary Public, for two main purposes:

- That the company granting power of attorney is duly formed and legally existing
- The individual acting on behalf of the company has proper representation and authority to delegate special and general powers of attorney) Purpose and extent of the power of attorney.

It must be determined in precise mode that it is issued for lawsuits and collections.

Language restrictions: a Power of attorney can only be executed in English

Authentication and legalisation of power of attorney (Notary's signature and certification must be asserted by a Government official as valid.

24.2.5 Execution of judgement

A judgement takes effect from the time it is pronounced. Interest runs on the amount of the Judgement from the date of judgement and if the rate of interest is not contractually agreed upon, the statutory rate applies. The current statutory rate is 6% per annum, which may change in due time.

Following are the different modes of enforcement allowed by the Rules of Court:

- Issue Writ of Seizure and Sale – directing the Bailiff, an officer of the Court, to seize and sell the Defendant's goods to satisfy the Judgement Debt.
- Examination of Judgement Debtor – by oral cross-examination on oath before an Assistant or Deputy Registrar about debts owing and what other property or means can be seized to satisfy the judgement.
- Garnishee Proceedings – where debts due to the Defendant from a third party may be ordered to be paid directly to the Plaintiff to satisfy the Judgement (the law does not permit the Judgement Debtor's salaries and/or wages to be garnished)
- Winding Up a company defendant or declare an individual defendant bankrupt. Collection costs (charged to debtor)

The Plaintiff may claim such costs if it is contractually agreed upon that any costs to be incurred in the course of recovery of any outstanding amount will be charged to the debtor. The Court has the discretion to order reimbursement of costs and the amount of such costs. The unsuccessful party in proceedings is almost invariably ordered to pay the costs of the successful party. The amount allowed is usually assessed on a so called standard basis, that is, a reasonable amount for all costs reasonably incurred, any doubts as to reasonableness being resolved in favour of the paying party. The successful party rarely obtains full reimbursement for all his costs.

24.2.6 Statute of limitation

Subject to the Limitation Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:

- Actions founded on a contract or on tort
- Actions to enforce a recognizance • actions to enforce an award
- Actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture. An action for an account shall not be brought in respect of any matter, which arose more than 6 years before the commencement of the action.

An action upon any judgement shall not be brought after the expiration of 12 years from the date on which the judgement became enforceable and no arrears of interest in respect of any judgement debt shall be recovered after the expiration of 6 years from the date on which the interest became due.

25. Slovak Republic

25.1 Amicable

25.1.1 General

Most business relationships are regulated by Slovak Commercial Code and Slovak Civil Code.

Interest rate should be specified in the contract between supplier and buyer. If it is not specified, the buyer can charge an interest rate on late payment based on the law. The interest rate is the same for all business relations and is prescribed by a special law. The annual amount of interest rate equals to the amount of interest rate determined by the European Central Bank, plus eight percentage points. Amicable costs are not collected in Slovak Republic because laws do not solve this matter not even in the court procedure.

The interests are always requested, both in amicable and in judicial phase. In a judicial proceeding the interest rate is based on the law, provided it is not contracted by parties; courts always award the interest that is required on condition the basic claim is accepted. From a cultural point of view, it is unfortunately rather difficult to get the total amounts of interests from the debtor. Often, the interests are considered a matter of negotiation between debtors and collectors.

25.1.2 Local agent

Atradius Collections offers direct collection activity managed by a selected network of local agents, who visit the debtors all over the country in order to collect your money. According to our experience this solution is particularly successful for specific debtor's categories like individual sole traders, shops and small companies. The local agents' network can also help investigate finding an untraceable debtor.

25.1.3 Lawyer

Atradius Collections assists you with a selected and professional network of the most experienced law firms in the judicial credit collection industry. Their network covers the Slovak territory and manages legal actions in all Courts districts.

25.2 Costs

Costs for amicable collecting are specified in your collections contract.

25.3 Legal actions

25.3.1 General

Commonly, a reminder before court action is sent to the debtor before the court proceedings are started. If the claim is not covered in full even after this reminder, legal action is issued. The legal actions are handled by the District Court of the debtor.

25.3.2 Jurisdiction

The fastest way is asking the court for a payment warrant which can be issued without a court hearing and can be executed on condition the debtor does not file a complaint. When the debtor files a complaint however, the proceedings continue as a remedial action. In case of a remedial action, the petitioner asks the court to issue judgement. The court usually calls a hearing, which means the proceeding takes longer than the proceeding for a payment warrant. Both decisions, payment warrant and remedial action can be appealed against.

Required Documents

Imperative documents are usually Original Power of Attorney granted before a Public Notary and Apostil, copy of unpaid invoices, current statement of account and copies of transport documents signed by the buyer.

These documents are required for supporting claims stemming from purchase contracts.

Optional documents are copies of credit notes, contracts,, orders, order confirmations, contract of the debt's transfer if the debt is claimed on behalf of a third company who is not the original seller of the unpaid goods. The particular documents required for legal actions are designated according to the type of claim and its characters.

It is helpful if the creditor has some security as acknowledgement of debt or bill. In the amicable phase of collections we will certainly try to get some security from the debtor, which can be later helpful for legal action.

25.4 Power of attorney

In the Slovak Republic it is possible to have a general power of attorney for all kinds of legal actions. The proxy, such as all petitions, must be in the Slovak language. AC can provide translations, but the original document with the signature needs to be in Slovak.

25.5 Execution of a judgement

Legitimate court judgements can be executed by executors in an execution proceeding. Enforcement of decisions imposing payment of a sum of money can be carried out by means of attachment of wages/salary and other income, compulsory debit, the sale of movable and immovable assets, the sale of a business, and the creation of a judicial lien on immovable property. These means are the same for both court execution proceedings and for the private executor.

In the case of a secured claim, a decision can be enforced by the sale of the security, through the sale of movable and immovable assets, bulk assets, groups of assets and residential or non-residential premises under ownership that have been given as security in accordance with specific legislation, or by compulsory debiting of a money claim given as security or by recovery against other property rights given as security.

Execution proceedings commence on the presentation of a motion. An execution can be ordered only on a motion by the entitled party or by anyone who can prove that the entitlement concerned passed over to or was transferred to him.

The entitled party may lodge a motion for an execution warrant if the obligated party does not voluntarily comply with the requirement, which the execution title imposes on him.

The execution proceedings end when all claims are fully paid, including all charges, partly paid, or for reason of tax reduction in case of negative end of execution proceeding.

Costs

Court fees account for 6% of the disputed amount.

Lawyer's fees depend on the form of legal action and the amount of claims in dispute and vary from 3 to 15% of the claim. The independent professionals whose intervention in any procedure is mandatory, fix the additional Court Clerk fees that can be added by law.

These fees can differ for any proceeding. The additional Court taxes are added, and the amount is determined specifically for every case, depending on the kind of proceeding and the amount claimed. In general, the losing party is charged with all court fees, but only a minor share of the winning party's lawyers' fees will be reimbursed by the losing party, which is determined by the judge.

26. Spain

26.1 LDC

Once we have carried out all the amicable recovery actions and we have to conclude that an amicable recovery is not possible, we analyse if it is possible to file a case and if so we send the file to an LDC. Currently we are using CyC external lawyers and attorneys. We value if it is financially wise to pursue a case, it depends on the amount of debt in relation with amount of possible costs and time involved. We also value the debtor's solvency and activity. If a debtor is not trading nor has any assets it makes no sense to consider legal action.

Before sending the file to a LDC, we need the client to provide the following "original documents":

Power of attorney signed before Public Notary and sealed with Hague Apostille (Hague Apostille is needed if the power is signed out of Spain).

Original invoices

Original contract, if any.

Original orders

Original delivery notes

Current statement of account

Correspondence between parties

Original promissory notes, cheques or bills of exchanging, if any

Any other document which could help to prove the debt.

26.2 Other actions

26.2.1 Interest

In Spain now we are claiming the interest in the amicable phase of debt collection but to get it out of the legal phase is very difficult. Anyway they are only included in legal debt collection proceedings.

26.2.2 Legal actions (type and costs)

Once we have decided to start legal proceedings, we chose the kind of legal procedure that would be best to claim the debt. The choice is between:

26.2.2.1 Monitorio

A legal procedure for undisputed debts under 250000 EUR. If we believe, because of the amicable actions, that the debtor will possibly oppose to the legal claim we would not recommend this type of legal action.

Proceeding: We file the claim, the court summons the debtor and if there is neither opposition nor payment, the court pronounces a favourable judgment. If the debts are paid, the procedure finishes, when the debtor raises opposition, we have to file a verbal proceeding (for debts under 3000 EUR) or ordinary proceeding (for debts from 3.000 EUR and above).

26.2.2.2 Verbal Proceeding

Legal procedure for debts under 3000 EUR.

Proceeding: We file the claim; the court summons the debtor and fixes a day for the verbal proceeding. In the court hearing the creditor shows ratification of the claim and the debtor files opposition. The creditor and the debtor propose and practice the proof they have and after some time the Court will announce the judgement.

26.2.2.3 Ordinary Proceeding

Legal procedure for debts from 3000 EUR and above.

Proceeding: we file the claim, the Court summons the debtor and asks to file for opposition or not. Once the debtor has filed for opposition, or if the period to do so has expired, the court fixes the date for the Previous Audience.

In Previous Audience the creditor and the debtor show ratification about their claim and opposition and propose the proof they want to use. The Previous Audience finishes and the court fixes another date for practising the proofs and to issue final report (Verbal Proceeding). After a period of time the court will hand down the judgment.

26.2.2.4 Cambiario

Legal procedure for any debt which is guaranteed with Promissory Note; cheque or Bill of Exchanging.

Proceeding: we file the legal claim; the court summons the debtor and orders the preventive attachment of the debtor's assets; if the debtor opposes, the Court sets a date for the oral proceeding (same action as in Verbal proceeding). After some period, the court will publish the judgement. If no opposition, the Court give the judgment and the attachment of assets goes on.

It is the best legal proceeding when we have Promissory Notes, Cheques or Exchanging Bills, as the reasons for opposition are established in law so that the debtor cannot base his opposition in any way that is not foreseen in law.

About the costs, it depends on every kind of legal procedure and the amount of debt, so that we only can give the approximate amount of debt in the specific case once we have analysed the kind of legal procedure and we know the amount of debt.

26.3 Collection costs

26.3.1 Power of Attorney

Once the decision is made to start legal proceedings, we prepare a draft of Power of Attorney that the client has to sign before a Public Notary and which is sealed with the Hague Apostille. Public Notary and Hague Apostille are necessary for foreign powers if we want them to be used in Spain.

If the Power of Attorney has not been signed before Public Notary or has not been sealed with the Hague Apostille, they will not be accepted by Spanish Courts. We need a specific power for every legal proceeding as every power the lawyers and attorneys that are empowered are different (it depends on the city where the claim will be filed).

26.3.2 Execution of the judgement

If a debtor does not pay voluntarily after received the judgement from the court, whether it is been issued in a Monitorio; Verbal; Ordinario; Cambiario, proceeding, we have to file for a new legal procedure: Execution Proceeding. This kind of procedure is needed for attaching the debtor's assets.

The costs and time involved depend on the debtor's assets, if a debtor has a lot of assets and we have to order a lot of attachments, it will be more expensive than if debtor has not got any assets.

26.3.3 Expected Time Frame

Monitorio: 8-12 months

Verbal: 1 year minimum

Ordinary: 18 months

Cambiario: 8-12 months

Execution: 18 months minimum (if debtor has properties without previous attachments).

26.3.4 Statute of Limitation

Accordingly with Spanish Law there are two periods for prescription:

- General period: 15 years (this period is applied for example to debts generated by due invoices).
- Special period of prescription for obligations that must be paid yearly or in shorter periods of time: 5 years. Insolvency procedures.

When we are informed that the debtor has applied for insolvency and once we know the insolvency procedure data, we prepare the draft of the writ that the client must complete, sign and send to court. We send this writ by mail to the client with the instructions he must follow to lodge the credit. We can't lodge credits on behalf of our clients as a specific power is required in Spain to act on behalf of other person or company and in Insolvency Procedures there's no time for obtaining this power.

26.4 Types of companies

The common types of companies in Spain are SL (limited society) and SA (business corporation). The minimum corporate capital for setting up a SL is 3000 EUR; and for setting up a SA is 60000 EUR.

In SA and SL, shareholders' assets are not affected by company's debts.

There is also a type called Communities, this type of company is quite different of a SL and SA. In Communities co-owners' assets are affected by company's debt but only in a subsidiary way (if company hasn't enough assets to pay all its debts).

27. Sweden

27.1 Amicable

Debt collection is strictly regulated in Sweden. In order to collect debts on behalf of a third party, a license issued by The Swedish Data Inspection Board is required.

An amicable solution is the fastest and cheapest solution for our customers. In case a debtor is not able to pay the full debt immediately, we try to make a payment arrangement with the debtor. In this way we save both time and costs. We are only allowed to charge debtor 160 SEK regardless of the outstanding amount.

27.2 Disputes

For disputed debts where we cannot find an amicable settlement, we have to obtain a judgement in order to continue collecting the debt. Depending on the nature of the dispute, this procedure can be quite lengthy and costly, as the lawyers will charge an hourly fee for their work.

27.3 Legal action

In order to receive a judgement for enforcement proceeding, the lawyer needs to file for a payment order at the local Bailiffs office. The payment order cannot be used if we are aware that debtor has disputed the claim. If that is the case a writ of summons must be filed with the local civil court (tingsrätten)

The cost for legal fee is 2.000 SEK + hourly fee for the lawyer if debtor has disputed the claim.

27.3.1 Enforcement proceedings

Enforcement proceedings are handled by a Bailiff's Court and can only take place based on a judgement. The Bailiff will try to establish a payment arrangement with the debtor.

If this is not possible or if the debtor does not fulfil his obligations according to a payment arrangement established by the Bailiff, the Bailiff will investigate if the debtor has any free assets. If there are free assets available, they will be taken as a security for the debt and can be sold by creditor following specific rules.

27.4 Insolvency Procedures

27.4.1 Composition

There are two basic types of composition to be recognized in Sweden. 'Voluntary composition' is handled strictly between the debtor and the creditors, while an 'Official composition' is handled by an outside solicitor or trustee under the supervision of the court.

27.4.2 Liquidation

The liquidation of a company can be used for different purposes. The owners can choose to close down in good order, settle all debts and liquidate. A liquidator or trustee is called for to undertake the interest of all concerned parties and to make sure that taxes and creditors are paid.

27.4.3 Bankruptcy

The Swedish Bankruptcy Act of 1987 states that bankrupt proceedings are handled at the local Court where the debtor is located. If the debtor himself is filing for bankruptcy, the court normally accepts that he is insolvent and no further evidence is needed. If a creditor is filing for bankruptcy he must produce some evidence showing that debtor is without means.

If a third part creditor has filed for bankruptcy, we will lodge the debt on behalf of the creditor and follow up on the bankruptcy proceedings until closure with or without dividend. That includes providing the receiver with further information, taking part in possible voting, decisions on behalf of creditor etc. If the creditor's involvement is needed, we will contact him.

27.5 Interests

We always add interest to the debt when collecting debts on Swedish debtors. There are two alternatives:

- To calculate interest rate as agreed between creditor and debtor.
- The legal interest rate which is 8% above the official reference rate, presently 3%.

27.6 Costs

27.6.1 Costs charged to debtor

AC Sweden always adds collection costs to the debt and tries to collect them. We are only allowed to charge debtor 160 SEK regardless of the outstanding amount. If and when the debtor pays the costs, the amount will be repaid to our customer, partially or fully to cover costs mentioned below.

27.6.2 Costs charged to our customer

These costs follow the tariff agreed with your local AC representative in the contract.

27.7 Receivables Expiring by Statute of Limitations

According to this law, all trade credits (invoice credits) expire after 10 years. Interruption of the expiry can be made by obtaining a judgement or a written acknowledgement of the due debt from a debtor.

27.8 Type of companies

- Aktiebolag AB – limited company
- Handelsbolag HB – trading company
- Kommanditbolag KB – trading company – one partner has a limited responsibility

28. Switzerland

28.1 Amicable / General information

28.1.1 Interest

Contractual interests can be recovered from the debtor. If not, legal interest fixed at 5% p.a. will be added to the principal amount.

28.1.2 Debt collection costs

The debt collection costs are charged to debtors, calculated on the basis of the recommendation of the Swiss Debt Collection Union. Collection costs represent the claim of the client to the debtor based on the payment delay of the debtor and include interest and costs resulting from the late payment.

AC forwards all recovered debt collection costs to our client to reduce the claim, or retains the costs instead or adds them to the success fees. This depends fully on the contractual agreement between the client and AC, the Debt Collection Agreement.

28.1.3 Prescription

The prescription period lasts 10 years for contractual claims according section 127 Swiss Code of Obligations. For bills of exchange and promissory notes it lasts 3 years.

28.1.4 Accepted Payment Methods

The most common payment methods are bank transfer and cheque payment. AC also accepts drafts, but these are very rare. We do not offer the direct booking off from debtor accounts.

28.1.5 Dispute

We always try to reach an amicable solution between creditor and debtor. To accomplish this, we always require all underlying contractual documents (e.g. signed contracts, orders, order confirmations, invoices and delivery notes as well as all standard terms that have been agreed upon).

We will always carry out an examination and analysis of the case in-house, supported by our legal team.

28.1.6 Financial reports

We are able to get financial reports on debtors in Switzerland prepared by experienced reporting agencies.

28.1.7 Public registers

It is possible to get an extract from the “Betreibungsregister” (register of initiated legal dunning procedures. In this register all initiated “Betreibungsverfahren” are registers. An extract costs around 20 CHF.

All private persons have to register with the “Einwohneramt” when moving into our out of a town. We are able to request information from these registers for a fee of 10 – 20 CHF depending on the district.

Companies are registered with the company register. A free extract can be searched via <http://zefix.admin.ch/>.

28.1.8 Private investigators

We are able to hire an experienced private investigator for an amount of 120 – 160 EUR + VAT for searches in Switzerland.

28.1.9 Retention of title

The retention of title clause must be agreed on at the latest when signing the contract. The goods under retention of title have to be clearly and specifically identifiable and the clause has to be registered at the competent Public Registry.

28.2 Legal phase

28.2.1 Mandatory pre-legal actions

Before being able to sue a debtor, mandatory “pre-legal” actions have to be initiated before the administrative official debt collection authority called Office des Poursuites or Betreibungsamt.

The Office notifies to the debtor a summons (Zahlungsbefehl) to pay within 20 days or to make opposition (Rechtsvorschlag) within 10 days. If no payment is made and in absence of opposition, the creditor can request the debt collection office to attach debtor’s assets or a Bankruptcy Petition can be filed if the debtor is a legal person or a merchant. The costs for this part of the legal procedure cannot be charged to debtor.

28.2.2 Legal actions (types & costs)

28.2.2.1 Lifting opposition through summary procedure

If it is not possible to convince the debtor to withdraw his opposition or to find an arrangement, the creditor must file a claim aiming at lifting the opposition (mainlevée de l’opposition in French or Rechtsöffnung in German), provided that the creditor has unequivocal documentation proving the existence of the debt (bill of exchange, cheque, acknowledgment of debt, contract).

The judge will decide only on documentary evidence in a summary fast procedure. If the judge decides in favour of the creditor, the debtor has 20 days to bring an action before the court.

Documents needed:

All documents proving the reality of the debt as above.

Costs:

This is rather inexpensive, albeit depending on the claim value e.g. for a claim between 10000 CHF and 100,000 CHF, the costs vary from 60 CHF up to 500 CHF. In general, the assistance of an attorney is not necessary as our debt collection partner lawyer will deal with the summary procedure.

28.2.2.2 Ordinary proceedings

If the creditor does not have any documentary evidence to get the opposition lifted in the summary procedure, he has to start an ordinary action before a competent court. Special complex cases do not go first through the debt collection procedure before the official competent office but are brought immediately before the court by an attorney.

Each attorney admitted at the bar in a specific canton is authorised to represent clients in the courts of other cantons. However, most of these attorneys are taking a local correspondent due to the fact that procedural laws are different in every canton and because of language barriers.

As a general rule, the ordinary procedure comprises of the following steps:

- Summons served through the post office by the Court or by bailiff or the police, depending on circumstances and canton
- Conciliation hearing
- Introduction of the action before the competent court
- Written submissions exchanged
- Hearing of witnesses/appointment of experts
- Judgement Submissions on evidences gathered a final conclusion

Power of Attorney & Documents needed:

- A simple Power of Attorney in favour of the signed attorney, signed by the persons empowered to represent the creditor. This Power of Attorney will mention all powers and rights granted by the creditor to the attorney in the legal action.
- All documents relating to the claim: invoices, contract, purchase orders, confirmations of order, transport documents and proofs of delivery technical reports, conditions of sale, payment instruments, if any and correspondence.

28.2.3 Lawyers fees

In Switzerland, the fees of lawyers are very high and generally calculated on an hourly basis. The fees depend on the seniority of the lawyer handling the case and may vary from 280 CHF up to 480 CHF per hour.

The court costs can also represent a substantial percentage of the claim, between 5% and 10% or more depending on the case. However, court costs are generally chargeable to the debtor if the case is won, but not the attorneys' fees, or only partially to judge's discretion.

Costs may vary from canton to canton. All this means that the cost aspect should be seriously taken into consideration before starting an ordinary procedure in Switzerland.

28.2.4 Expected time frame

Four to six months before execution is necessary in the procedure before the debt collection office, providing that no opposition is made. Execution takes another 3 or 6 months or more depending on circumstances and workload.

Summary procedure to lift opposition can last more than 6 months plus execution. Ordinary proceedings can last 1 to 3 years or even more depending on the case.

28.3 Execution of the judgement

Swiss judgements are enforced by attachment of the debtor's assets or by filing a Bankruptcy Petition if the debtor is a legal person or a merchant. This 2nd type of execution is widespread because it is an extremely high means of pressure, either the debtor pays or makes a proposal or he is declared bankrupt.

28.4 Insolvency proceedings

28.4.1 Bankruptcy

The forced liquidation of all debtor's assets and distribution of the proceeds to the creditors according to their ranking. Creditors are ranked as secured creditors, e.g. mortgage creditors, employees etc. and unsecured creditors (commercial creditors).

Creditors are invited to lodge proof of debt with the Bankruptcy Office (Konkursamt) generally within 30 days from the Bankruptcy Declaration. Late lodging is possible but entails some costs.

Necessary documents :

- Copy of invoices,
- Payment instruments, if any,
- Statement of account,
- Judgment.

The trustee in bankruptcy is appointed by the Assembly of creditors which decides whether it will be a particular person or a specialized officer belonging to the Bankruptcy Office.

The creditors receive a certificate of loss (Verlustschein) if their claim is not satisfied in the Bankruptcy.

28.4.2 The Moratorium and Composition (Sursis concordataire) (Nachlaßstundung)

Generally on debtor's request to the judge who will grant the moratorium after examining the restructuring plan, the balance sheet, the trading account and the state of the bookkeeping. An officer/trustee will be appointed to control the activities. Inventory will be made; the creditors will have to declare the claims.

The Moratorium is granted for 4 or 6 months but an prolongation up to 24 months is possible. During the moratorium period, a payment plan or composition proposal is worked out.

The proposal is accepted if the majority of creditors representing at least 2/3 of the claims have voted in favour or 1/4 of creditors representing at least 3/4 of the claims. After the acceptance of the proposal by the creditors, it will have to be ratified by the Court.

29. Tunisia

29.1 Overview

As with all Maghreb countries, Tunisia is not an easy place to collect debts. Unfortunately Tunisian debtors often show bad faith and try to avoid payment by a range of possible delaying tactics, which debt collectors have to deal with. To this end, most of the debtors are assisted by lawyers who are contributing to the slow pace of the collection process in the interest of their clients. Judges, legal system, courts' organization are far from being efficient to the detriment of creditors.

29.2 Amicable procedure

Atradius Collections is well equipped to collect debts in Tunisia through well-trained collectors using repeated phone calls, most of the time in French language, to chase the debtors by all communication means during a period of time as short as possible depending on the debtors' response and reaction.

Payment proposals and raised disputes are discussed with clients. The debtors' financial standing is also examined during that period. Normally after 3 weeks without settlement/significant movements in the debt collection process, collectors will make a decision to go to the next step. One thing is important to know, that it is better to come to an arrangement with the debtor than follow a time-consuming and always uncertain legal action, particularly in this country.

Collectors' decision after in-house debt collection attempts can be to increase the pressure through local agents always out of court. Sometimes, those agents will appoint their bailiff who will send an out of court formal notice for payment to the debtor. Depending on the specific details of the case, these local "agents" can also be a lawyer who will continue to put pressure on out of court and try to come to a settlement.

Depending on the outcome of the amicable debt collection procedure, the documents available and debtor's solvency, Atradius Collections will always make the most sensible recommendation as to whether or not it is worthwhile and economical to go legal.

29.3 Types of legal actions usually used and documents required

The most frequent legal procedures used are:

1. Payment Order procedure
2. Writ of Summons
 - a) Payment Order is the quickest procedure but it can only be used if the claim cannot be disputed. It means that to get access to that procedure, we need to have in hands undisputable documents like bills of exchange, written acknowledgment of debt, unpaid cheques. It is important to try to get these documents from the debtor during the amicable procedure so that, should the occasion arise, we can have access to the Payment Order procedure in the future.

- b) Writ of Summons: it is the most frequent used legal procedure in absence of undisputable documents. This procedure is unfortunately very long and complex. Hearing adjournments on all grounds are very frequent (lawyers' tactics, extreme formality, bureaucracy of the legal system and judges, missing of proper documentation).

The main problem creditors are confronted with is the documentation. That is a real problem, as Tunisian law requires original documents (invoices, orders, shipping documents). The judge can however accept "certified true copies" of the documents. The certification must be made by a third authority (Notary, Municipality), which can be problematic.

If the creditor succeeds in overcoming bureaucracy and procedural obstacles, a judgment can be obtained but generally only after a long time (2 years or more depending on case specificity). Afterwards the debtor can still appeal the decision which will also take time.

Execution of the final judgment is often very problematic if the debtor does not pay voluntarily to avoid attachments of movable or immovable assets or seizure of his bank accounts. Most of the time, legal procedure is so long that debtors have enough time to organize their insolvency.

29.4 Legal costs and fees

Court costs are not that high in Tunisia. There is practically no difference if we proceed with Payment Order or with a Writ of Summons. Creditors have to pay the costs of the so-called Bailiff Notary: +- 50 EUR. In addition the creditors have to settle the registry fees and judgment stamp which are fix fees: +- 100 EUR for the Writ and +- 50 EUR for Payment Order.

The party who appeals a judgment has to pay approx. 20 EUR appeal fee + 50 EUR to summon the adversary to appear. Registry fees and stamp for the judgment in appeal are also fix fees to be paid by the winning party in appeal: +- 40 EUR

Lawyers' fees: These depend on case specificity (e.g. complex disputes). Generally (and just as an indication without commitment) lawyers' fees in first instance vary from 400 EUR to 1000 EUR and in appeal from a further 500 EUR to 1000 EUR but once again with reservations for complex cases.

Execution costs and fees: can considerably vary depending on the execution ways used.

As an indication and without commitment:

- If the creditor seizes debtor's bank accounts, the execution costs can amount to 600/700 EUR
- For movable assets, the execution costs can exceed 900 EUR
- For immovable assets, it can be more than 1000 EUR.

30. Turkey

30.1 Amicable phase / General information

30.1.1 Interest

Contractual interests can usually be claimed. If no interest rate is agreed contractually the legal interest and default interest is as per the maximum interest rates applied to foreign exchange accounts set by the Turkish public banks.

The actual interest rate applied to Euro accounts as of 12-11-2010 is announced as 0.25% - 8% up to 1 year. As these rates fluctuate daily our lawyers advised to apply an average rate of 6 %

It has to be noted that in case of legal actions the Turkish judge may decide to dismiss any interest claim depending on the circumstances surrounding the case, any dispute or debtor's financial situation.

If the claim is in Turkish currency, the interest rate is significantly higher (approx. 20 % p.a.) but with the same restrictions regarding judge's discretion to dismiss the interest claim or reduce it.

30.1.2 Collection costs

Collection costs can only be demanded from the debtor if these have been contractually agreed between creditor and debtor.

30.1.3 Prescription

The following prescription periods may be of interest:

- Commercial invoices 10 years
- Shipping invoices: 1 year
- Bills of exchange: 3 years
- Promissory notes: 3 years
- Checks: 6 months

30.1.4 Disputes

We always try to reach an amicable solution between creditor and debtor. To accomplish this, we always require all available contractual documents (e.g. signed contracts, orders, order confirmations, invoices and delivery notes as well as all standard terms that have been agreed upon). We will always carry out an examination and analysis of the case in-house supported by our legal team.

30.1.5 Retention of title

It is possible to agree on a retention-of-title-clause. However, the contract has to be certified by a Turkish notary and duly registered in a special register.

It offers however no protection against third parties buying the secured goods in good faith, since they are not obliged to examine the register. Therefore the retention of title generally has limited positive effects.

30.1.6 Types of Companies (most frequent)

The most frequently used company structures are the Anonim Sirket (Joint Stock Company) and the Limited Sirket (limited company).

There are also a considerable number of individual firms where the director is personally liable.

30.1.7 Amicable Agents

We have two experienced local debt collection attorneys in Istanbul acting like a debt collection company favouring as much as possible the debt collection out of court but representing us also in Court if legal actions become unavoidable.

30.2 Legal

30.2.1 Judicial Organisation

The Turkish judicial system is composed of High Courts, Courts of Appeal and the Supreme Court of Appeal, which is the last instance for reviewing judgements rendered by the lower courts.

Civil courts of 1st instance cover all civil cases other than those assigned to the Peace Courts.

The Turkish legal system is well organized and rather efficient, but since the debtors are generally making opposition, the legal process turns out to be extremely slow with appointments of experts and granting the debtor a lot of remedies.

30.2.2 Payment Order proceedings

The first step to be taken is to have a Payment Order issued through the Bailiffs Office where the debtor is located. The debtor is summoned to pay or to declare his objections within 7 days as from the service of the Payment Order.

If he fails to do so he takes the risk that all his assets are going to be attached.

The debtor has 3 options:

- Pay the amount due and the disbursements
- File an objection
- Keep silent

If the debtor stays silent, the creditor will apply to the Bailiffs Office and attach movable and immovable properties including bank accounts.

30.2.3 Proceedings after objection

In cases where the debtor files an objection, no enforcement will be initiated and the creditor has to apply to the Commercial Court. Fines can be imposed to debtors having objected in bad faith provided the creditor can prove the bad faith.

Parties will submit their petitions and replies. In most cases the Court will send the file to experts. Parties can thereafter submit their objections to the expert's report. The Court will render its judgement after considering and examining all written petitions relating to the objections and allegations by the parties which can take a considerable time.

If the Court decides that the objection made by the debtor is not justified and if the debtor appeals the decision, it is possible to pick up the enforcement. An appeal does not stop the enforcement except if the debtor submits a Bank Guarantee for the claim amount to the Bailiffs Office.

Legal costs:

A very limited amount of costs are charged by the judge to the debtor but not the attorney's fees. We generally foresee a budget of 20% of the claim to be paid to our attorney: 5% for Court costs, administrative expenses and 15% attorney's fees but only on the collected amount. If no collection, we just pay 5% of the claim amount for court costs, administrative expenses, researches etc.

Power of Attorney

Each attorney has to be empowered when acting on behalf of a creditor. Powers of Attorney have to be signed by the person that can represent the creditor company. Their signatures have to be authenticated by a public notary and the Apostil of the Hague.

Time frame:

An average of 3 to 4 years in case of oppositions (more if heavy disputes) but also less depending on case and circumstances. If no opposition to Payment Order: approx. 8 months

30.3 Enforcement

The enforcement of the judgement is carried out on all movable or immovable properties including debtor's bank accounts or through bankruptcy. Enforcement of judgements can turn out to be problematic, time-consuming and can last several months and longer.

In our experience enforcement is generally not profitable. Legal actions are mainly initiated to put pressure on debtors to get a voluntary payment from the companies or from the directors/shareholders who generally have high value personal assets. It is

particularly advisable to try getting a Personal Guarantee Act drafted according to Turkish law.

30.4 Insolvency proceedings

30.4.1 Filing a bankruptcy petition

The creditor can decide to file a Bankruptcy Petition against the debtor immediately after due date of the invoices or after the payment order proceedings ended fruitless because the debtor did not pay. The creditor is only entitled to require this kind of bankruptcy after having started a Payment Order proceeding once.

It is to be noted that in case of objection to the Payment Order, the creditor can initiate a lawsuit before the Commercial Court not only for the nullity of the objection but simultaneously with the threat of bankruptcy.

If the claim appears to be sufficiently proved, the Court will generally opt for debtor's bankruptcy.

Documents needed:

- Invoices (legible copies)
- Purchase orders (legible copies)
- Delivery documents and transport documents (legible copies)
- Exchange of correspondence
- Payment instruments, like bills of exchange, promissory notes, bounced cheques
- original versus copies: if the copies are not legible enough, the Court will require the documents in original

30.4.2 Bankruptcy

The application to the Court can be made by the debtor or by the creditor. The Court will investigate and determine if the debtor (natural or legal person) is insolvent. The bankruptcy officer will send notices and invite all the creditors to attend a meeting.

The elected Bankruptcy Management Board will manage and liquidate the bankrupt estate. All creditors will have to register their claims, which will be listed by the bankruptcy management.

The creditors may object to the claim listed. Bankruptcy proceedings are extremely time-consuming. They can last for several years and are often not profitable to creditors. In our daily collection work we have not noted a high number of bankruptcies in Turkey.

30.4.3 Judicial composition

Before or after Bankruptcy, a creditor is entitled to propose a partial settlement or a total payment over a certain period of time. The proposal has to be submitted to the creditor's approval. In our daily collection work we have noted an extremely low number of Judicial Compositions in Turkey.

30.4.2 Adjournment of bankruptcy procedure

The debtor can apply for his own Bankruptcy and simultaneously for its adjournment. The debtor has to submit to the court a clear and complete feasibility study showing how and when the financial situation can improve.

The court will examine if the feasibility study is realistic and if the management will be able to turn the company around. If so, the bankruptcy will be adjourned for a certain period of time.

In a similar way, in case a creditor initiates bankruptcy proceedings and when the Court is convinced by debtor's feasibility study, the Bankruptcy decision will be adjourned.

31. United Kingdom

31.1 Late Payment of Interest Act

This Act sets out to assist businesses faced with late payment problems. It does this by adding a number of rules to contracts between businesses. It is important to realise that this legislation only applies to a commercial debt. It does not apply when one of the parties is not acting as a business, for example sales to a private individual/consumer. The debt should be one that has arisen in the course of business.

Both parties should be businesses, commercial entities or public sector organisations. Interest is claimed at the Bank of England rate currently at 0.5% plus 8%. The rate is listed as the UK clearing bank base lending rate in the Financial Times. It is also sometimes known as the repo-rate. The rate that applies is the rate in force at the end of the day on which the payment was due.

In addition to this for contracts formed on or after the 7th August 2002, in addition to interest the supplier may also charge an amount to compensate for the costs of collecting late payments. The amount of compensation that can be claimed is determined by the amount outstanding as follows:

Amount Owed Compensation

- Up to GBP 999 = GBP 40
- GBP 1,000 to 9,999 = GBP 70
- GBP 10,000 and over = GBP 100

31.2 The Limitations Act 1980

Outlines the time limit within which a creditor can chase a debtor for outstanding debts. The Limitations Act 1980 only applies when no contact has been made between the creditor and the debtor within the given time limit and only applies to residents of England and Wales. Creditors are given a fixed period of time to chase their debtors, which is outlined in the Limitations Act 1980. This is 6 years, after this time it is no longer possible to pursue their debt.

31.3 Legal Actions

Within the United Kingdom there are several different and separate legal jurisdictions: England and Wales; Scotland and Northern Ireland. While in general you can take the same actions in each country, these are the following differences:

- Different solicitors
- Different time scales
- Different costs.

Generally speaking, the first stage of legal action in every jurisdiction is the issuing of a Letter Before Action (LBA). This is a letter sent to the debtor from the solicitor informing them that should they not make payment in full, legal proceedings will be issued.

If the LBA is not successful there are three main options:

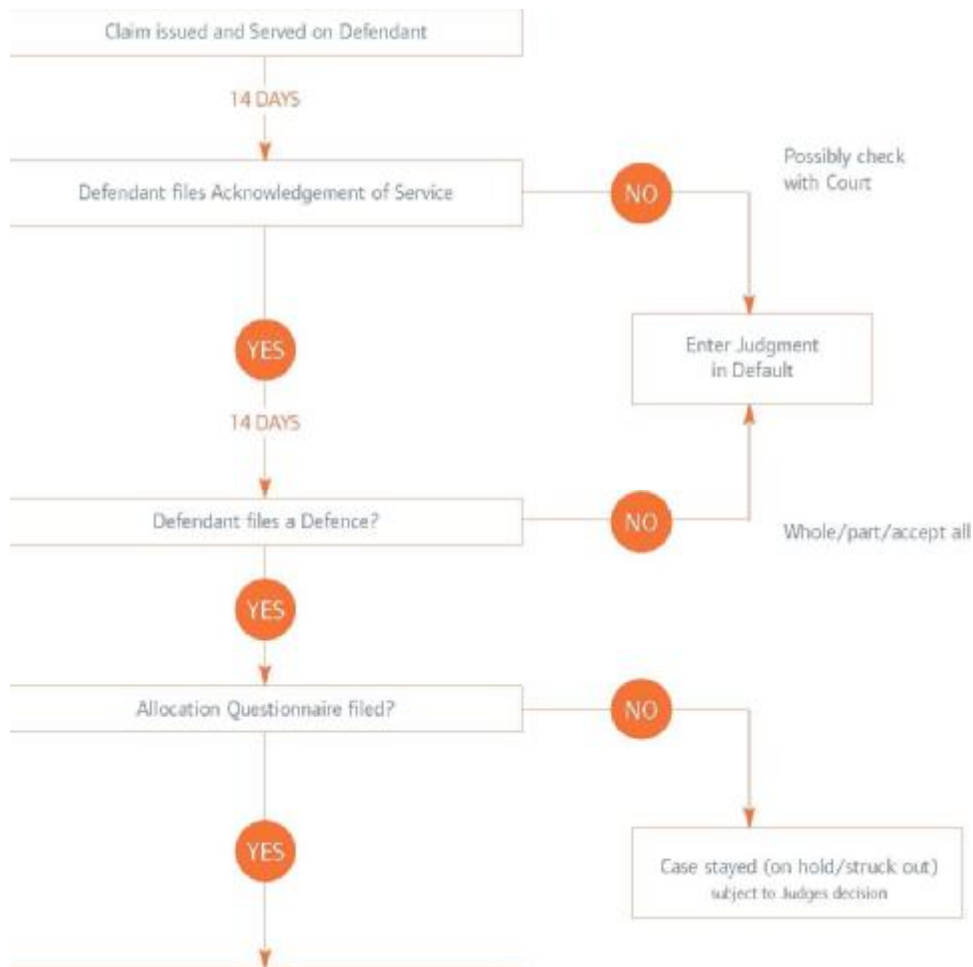
- County Court Judgement (CCJ)
- Full Court Proceedings, generally a trial
- Making a company insolvent, often called winding them up. However, in the last option, there is no guarantee that making a company insolvent will recoup your money in full or at all.

There are two steps to successfully recover your monies in the UK by taking legal action. The first is obtaining the judgement and then the second is the enforcing of that judgement.

Depending upon whether your debt is insured or un-insured will affect the initial stages of legal action. If your debt is insured and you have complied with all obligations under your policy then in most cases the Credit Insurance will contribute towards legal costs.

You will still be consulted about the legal action but where a claim has been paid then Credit Insurance will direct such action. If Credit Insurance does not cover your debt then we will require you to agree legal action and costs in writing prior to commencement of litigation. We will also ask you to make payment on account for legal action, particularly if the case is defended.

31.3.1 Court Process For Obtaining a Judgement in England and Wales



31.3.2 Enforcement of Judgement

There are two steps to successfully recovering your monies, in the UK the first is obtaining the judgement and then the second is the enforcing of that judgement. There are several options for enforcement but the most common is via an Enforcement officer or Sheriff

Once a judgement is obtained, then enforcement action can be taken. A judgement does not necessarily lead to a successful collection. The enforcement officer will visit the premises to try and collect the monies. On the other hand, this can be a lengthy process over several months and reports from these officers are not issued on a regular basis.

31.3.3 Power of Attorney

This is not a requirement for the UK, nevertheless for cases in Northern Ireland, if the debtor files a notice of appearance then they intend to attend court, we require an affidavit of debt. This must be signed by someone at the client company who is aware of the debt details and has some level of authority. The affidavit is issued by our solicitor and must be returned to them.

31.3.4 Legal Costs

These will differ greatly depending upon the type of legal action necessary and the jurisdiction in which we are taking action. In any case, our experienced collectors will have a full discussion with you regarding costs and time scales before legal action is commenced.

Certain legal costs can be charged to the debtor, e.g. some court costs. The decision to allocate costs lies with the judge but in most cases approximately 60 – 70% of all costs are for the debtor's account after successful judgement

31.4 Insolvency

If we establish that your debtor has become insolvent we will advise you whether there is any hope of a payment from your debtor. We will also register your debt with the insolvency practitioner. If it is judged that there will be dividends at some point in the future, we can monitor the debtor to claim the dividends when appropriate.

31.4.1 Scotland

Generally all straightforward debt actions will be taken in the Sheriff Court of the defender's residence or the court where the defender trades.

31.4.2 Summary Cause Actions

A court action is commenced by the claimant preparing a summons on a pre-printed form. Supporting invoices or a statement of account should be produced to the court

along with the summons. A copy of the summons will require to be served (issued) on the defender.

This is done by the claimant's lawyer – usually by recorded delivery post – and thereafter by sheriff officer if postal service is unsuccessful.

With any summons there will be two critical dates -the return date and calling date. Generally the return date is the day when the defender must return any document to the court whilst the calling date (always 7 days after the return date) is the date the case will call in court for a hearing.

What happens if the claim is undisputed?

If in response to the summons the defender does nothing the pursuer can ask for judgment (known as minuting for decree) by completing a pre-printed form. Judgment will be granted at the 'calling date'. The court takes about three weeks to send the judgment to the claimant's lawyer.

However, where appropriate (in cases where the defender is an individual or small trader) the defender may admit liability and offer to make payment of the debt by instalments or by a deferred lump sum – known as a Time to Pay Direction or Time to Pay Order.

Ordinary Actions

Unlike summary cause there are no pre-printed forms. The writ will be drafted and forwarded to the court. The defender has 21 days after service of the writ to decide what action to take.

Defender's responses

There are various ways the defender can respond to the service copy writ. The defender does nothing – the claimant can, on the expiry of 21 days, minute for decree. If the defender admits the claim and makes a payment offer the claimant completes an appropriate form and sends it to the court. If the offer is unacceptable, the case will call in court and the court will decide if the application should be granted. The court takes about three weeks to send the judgment to the claimant's lawyer.

Enforcement of Decrees

The responsibility for enforcing sheriff court decrees falls on sheriff officers. The generic term for Scottish enforcement is known as 'diligence'. Different measures are employed depending on whether the defender's moveable property is situated either out with or within a dwelling house.

The effectiveness of diligence can best be described as a 'filtering process' with the slow payers settling earlier on in the enforcement regime.

Judgement enforcement in Scotland was radically reformed by the Debt Arrangement and Attachment (Scotland) Act 2002 and will be enhanced following implementation of the Bankruptcy and Diligence (Scotland) Act 2007. The legislation deals more sympathetically with individual consumer debtors. Commercial debtors have less protection.

31.5 The Debt Arrangement Scheme

A central feature of the 2002 Act is the Debt Arrangement Scheme available to individuals and sole traders, allowing them the opportunity of repaying their debts in a managed way over a given period of time without the threat of enforcement.

Such individuals should have surplus income to repay their debt by instalments. During the existence of a DAS judgement enforcement and applications for the debtor's bankruptcy will be prohibited. Also, it will be incompetent to carry out judgement enforcement whilst an application is being considered.

Charge for Payment

Before commencing judgement enforcement the sheriff officer serves a charge, which is a formal written request, on the defender. It requests payment of the principal debt, interest and charges. It requires that the debt be paid within 14 days. Detailed Examination Of Attachment Orders Attachment orders will most often be used for business-to-business debts where it is obvious goods are outwith a dwellinghouse.

How does the Act define dwellinghouse?

There is no definition of 'dwellinghouse' but it does not include:

A garage, even although it forms part of the structure or building, which consists of or includes the dwellinghouse, or other structures or buildings used in connection with the dwellinghouse.

The effect of this is that all items stored within a garage, including a car, can be attached by an attachment order even although it is obvious the debt may be consumer.

How does the sheriff officer carry out the attachment?

By entry and valuation. Basically the officer enters the property and values the articles being attached at a price which they are likely to fetch if sold on the open market.

Reporting the attachment. The attachment must then be reported to the court within 14 days (s.18).

Removal and auction of attached articles Once the report of the attachment has been received by the sheriff, arrangement can then be made for the removal and sale of the articles. The officer gives seven days notice to the debtor of the date specified for the articles removal and may open shut and lockfast places for this purpose.

Any articles, which were attached but not removed, will no longer be subject to the attachment order. The auction of the removed articles shall not take place until at least seven days after the articles have been removed.

There are various actions in relation to the attached articles, which are unlawful after their attachment and prior to their removal such as their removal, their gift, damage or destruction. In these circumstances a further attachment may be competent.

Can a debtor stop the process?

The debtor can make an application to the sheriff requesting the attachment should be lifted on the grounds the aggregate value of the attached articles is substantially below the aggregate of the prices they are likely to fetch if sold at auction.

How To Attach Articles Kept In Dwellinghouses

To provide improved debtor protection, the Act has introduced the Exceptional Attachment Order. However, if granted, an exceptional attachment order will still allow for the debtor's goods being valued and attached by the order, which can thereafter be removed for auction and subsequent sale.

Examination Of Exceptional Attachment Orders

Unlike attachment orders which, in effect, will be available to creditors on demand on all occasions (although subject to conditions) an exceptional attachment order will only be granted on specific application being made by the creditor to the sheriff. Creditors should note a whole host of items are exempt leaving only 'luxury' items being capable of attachment.

Before commencing the procedure a charge for payment has to be served.

How is an application for an exceptional attachment order made?

An Exceptional Attachment Order will only be granted on application by the creditor which the sheriff may grant on being satisfied certain matters exist and also that there are exceptional circumstances. In the event these exceptional circumstances exist the sheriff will grant the order.

However, the order will only apply to 'non-essential' assets of the debtor kept in any dwellinghouse specified in the application'.

What are the exceptional circumstances?

The exceptional circumstances that must exist before granting an exceptional attachment order are an effort to encourage less intrusive enforcement.

They include negotiations, arrestment and earnings arrestment (attachment of earnings), which should be first attempted.

Also the sheriff will require to be satisfied that there is a reasonable prospect the sum recovered from an auction of the debtor's non essential assets would be at least aggregate to the following a reasonable estimate of any chargeable expense, and - £100.

Subject to exceptional circumstances existing, what matters will the sheriff take into account in deciding whether to make the order?

These include:

- The nature of the debt (and in particular, whether the debt incurred relates to any tax or duty or any trade or business carried on by the debtor).
- Whether the debtor resides in the dwellinghouse specified in the application.

- Whether the debtor carries on a trade or business in that dwellinghouse.
- Whether money advice has been given to the debtor.

Any agreement between the debtor and creditor for the settlement of the debt; and whether a time to pay direction or time to pay order has been entered into but not adhered to.

So subject to the conditions of the Act being fulfilled, the sheriff may more readily grant an exceptional attachment order in relation to the jobbing builder who carried on business from his house (essentially a commercial debt) as opposed to a consumer who has fallen into arrears with credit card repayments.

What is the effect of an exceptional attachment order?

The exceptional attachment order shall have the following effect:

- Authorise the attachment, removal and auction of the debtor's non-essential assets kept in any dwellinghouse specified in the application.
- Specify a period during which the order is executed.
- Empower the officer to open shut and lockfast places for the purposes of executing the order. The officer must be satisfied there is a person in the house not younger than 16 and capable of understanding the procedures being carried out. Failing this forced entry can still be taken subject to four days notice being given.

Does the sheriff have any other powers?

Before deciding whether to make an exceptional attachment order the sheriff may make an order for a visit to the debtor by a person specified for the purpose of giving money advice to the debtor; or such other order as the sheriff may think fit.

When are the attached articles removed?

The sheriff officer shall 'unless it is impractical to do so immediately remove any article attached by an exceptional attachment order from the dwellinghouse'.

Where however, it is impractical to remove the articles immediately then the sheriff officer shall give more notice to the debtor for the date arranged for their removal.

When can the articles be sold and can the debtor redeem them?

Articles cannot be auctioned until seven days have passed since their removal from the dwellinghouse. Within the seven-day period the debtor can redeem the goods at the value fixed by the sheriff officer, the consequences being that once so redeemed the article will cease to be attached.

32. United States

Atradius Collections US has a two-tiered collection process: the amicable phase and the legal phase. Amicable collection efforts can pursue the principal amount due, as well as interest, collection costs and attorney's fees. Legal collections in which a lawsuit is filed can only pursue the principal amount due, unless there is an agreement, signed by the debtor, in which the debtor agrees to pay pre-judgment interest and/or collection costs and/or attorney's fees.

32.1 Amicable collection

Our staff of collection professionals carries out the first US collection tier in-house. They relentlessly pursue debtors within the bounds of federal and state laws, and liaise with clients and the relationship management team to ensure that we service our clients efficiently and productively. Collectors work to ensure that, if the amicable phase is not productive, the file is adequately documented to fully utilise the second tier of the collection process, the legal phase.

32.2 Legal collection

The second tier of US collections is legal collections. The US has dedicated legal collectors who maintain an extensive network of commercial collection attorneys, servicing the US and parts of the Caribbean. We use only attorneys who are members of one or more law lists, which independently assess and bond prospective attorney members. In this way, we are assured that the attorneys working our files are committed to, and experienced in commercial collections in their respective jurisdictions.

32.3 Legal System

The US legal system is comprised of 51 separate legal systems: the federal court system and the court systems of the 50 states. The vast majority of commercial collection matters are handled through state courts.

32.3.1 Statutes of Limitations

The statutes of limitations govern the time period within which a lawsuit must be commenced. Statutes of limitation vary from state to state, and generally are between 2 and 6 years for an open account or sale of goods, and between 3 and 10 years for a written contract.

32.3.2 Attorney Process

Attorneys in the US are required to make amicable efforts to resolve an account before filing a lawsuit on behalf of a creditor. Attorneys will generally limit their amicable efforts from 7 to 30 days, depending on whether they are able to make personal contact with the debtor.

32.3.3 Attorney Costs and Fees

Our attorneys handle US legal collections on a contingency fee basis. The only exceptions to the contingency fee arrangement are if the account is heavily disputed, or if the debtor files a counterclaim against our client and the attorney must defend the client against the counterclaim. In those instances, the attorney will require compensation at an hourly rate, and will require an upfront retainer against which he will bill the hourly rate.

If our attorney has made no contact with the debtor, or the debtor remains uncooperative, our attorney will submit to us his recommendations and suit requirements for our client's consideration. An attorney's suit requirements consist of court costs and a non-contingent suit fee. Court costs cover the out-of-pocket costs an attorney must incur to file a lawsuit, such as the filing fee, service of process fee, and sometimes motions fees or garnishment fees. Any unused costs are refunded upon completion of the case.

The non-contingent suit fee can be up to 5% of the balance placed for collection. That amount is credited toward an overall contingent suit fee of 10%, when or if funds are collected after suit is filed. We negotiate with our attorneys to keep non-contingent suit fees low, particularly on cases over USD100000. The attorney earns the non-contingent suit fee upon the filing of the lawsuit, and the fee is non-refundable.

US clients advance suit requirement to our office. This requirement ensures that our office incurs no expense to litigate a file on the client's behalf, and further confirms that the client will be fully responsive and cooperative throughout the litigation process. We forward suit requirements to the attorney, along with any required documentation, such as client's affidavit, declaration, or supporting documentation.

32.3.4 Filing the Lawsuit

Once the attorney receives the suit requirements and any necessary documentation, he will prepare the summons and complaint, and file both with the clerk of the court. All courts require personal service of process upon the debtor. Most courts require that the defendant be served with the summons and complaint within 90 to 180 days of when the lawsuit is filed and will frequently dismiss the lawsuit if the debtor is not served within the state's statutory period of time for service of process. If the debtor is a corporation, and service cannot be perfected on the corporation's registered agent, our attorney can seek leave of the court to perfect substitute service of process upon the Secretary of State for the state in which the debtor corporation is located. Substitute service of process is not available for individuals, sole proprietorships, or other businesses not registered with the Secretary of State.

32.3.5 Proceeding with Litigation and Discovery

When service of process has been perfected, the defendant will have between 20 and 40 days to file an answer to the complaint. The time limits vary depending on the state in which suit was filed.

If the debtor files an answer to the complaint, the next stage is discovery, the longest stage of litigation. Discovery is a court-mandated period of time during which the parties can formally request production of documents, requests for answers to interrogatories and requests to admit, and take depositions of witnesses for the opposing party. The court will set a deadline by which all discovery must be completed.

The most important aspect of discovery is that each party must provide the information they are requested to give. If a party does not fully provide requested information, the court will bar all information that has not been produced, or witnesses who have not been disclosed. This is a very serious stage of litigation, designed to promote resolution of a lawsuit without resorting to trial. In addition to barring evidence, the courts can impose monetary sanction on parties who are not timely or complete in their answers to discovery.

32.3.6 Alternative Dispute Resolution

The US courts are increasingly backlogged. More and more courts are requiring that parties to a lawsuit submit to non-binding mediation or arbitration before a case will be allowed to proceed to trial. The parties split the cost of the mediator or arbitrator, who is frequently an attorney or former judge.

Mediation or arbitration is an informal process by which an arbitrator or mediator meets with the parties' attorneys and one or two witnesses for each side. The parties each present their documentary evidence and one or two witnesses. The mediator/arbitrator will discuss the strengths and weaknesses of each party's case and will make a recommendation about a probable outcome at trial. If both parties agree with the recommendation, a settlement agreement is submitted to the court.

The recommendation of the mediator or arbitrator is non-binding, and either party can choose not to accept the recommendation. Nevertheless, there is one important consideration for the party that chooses not to accept the recommendation. If that party receives a lesser result at trial than what the mediator/arbitrator recommended, that party must pay the opposing party's attorney's fees.

32.4 Obtaining Judgement

Judgement can be obtained by 4 different methods, and will generally include an award of court costs (filing fees, service fee) and post-judgment interest at the statutory rate.

If the debtor does not file an answer to the complaint within the statutorily prescribed time, our attorney will file a motion for default judgment. Depending on the backlog of the particular jurisdiction, it can take from 30 to 180 days to obtain an order of default judgment from the court. A judgement debtor can file a motion in the court, seeking to vacate the default judgement order so that he can defend the lawsuit. Each state allows the motion to vacate to be brought within a specific period of time, usually from 6 to 12 months after the date the default judgment was entered.

Judgement can be entered as a result of a settlement agreement, through entry of a consent judgment order. Settlement agreements, whether from mediation, arbitration

or simply the negotiation of the parties and their attorneys, normally include a consent to judgement clause.

The consent judgement clause allows the plaintiff/creditor to ask the Court for immediate entry of judgement against the defendant/debtor, if the defendant defaults on the agreement, and does not cure the default within a short time period set forth in the agreement.

Judgement will be entered at the conclusion of a trial. Depending on the court backlog, it can take from 6 months to 5 years to obtain a trial date, as oldest cases are tried before newer cases.

A lesser-used, but effective, method to obtain judgement is the summary judgement motion. Summary judgement is reserved for cases where there is no dispute as to the material facts of the case. It is similar to a trial on paper, and no witnesses are presented. Any hint of a factual issue will usually defeat the summary judgement motion. If a motion for summary judgement is denied, the case is not concluded, and the matter will proceed to trial, if the parties do not settle. It can take from 3 to 12 months from the time the motion is filed for the court to rule on a summary judgement motion, because the parties are given time to fully brief the legal issues for the court.

32.4.1 Judgement Execution

After the Court enters the judgement order, our attorney records the judgement in the public record. The recording makes the judgement a lien against the judgement debtor's current or after-acquired property. Judgement liens will remain valid and enforceable from 5 to 25 years after the date of entry, depending on the jurisdiction. Post-judgement interest accrues from the date the judgement was entered, at the state's statutory rate, if the Court includes post-judgement interest in the judgement order.

The judgement must be served upon the defendant through service of process, after which the Court will enter a writ of execution. The writ of execution allows the judgement creditor, through the court and local sheriff or bailiff, to garnish bank accounts, seize and sell property, and in some states, place a keeper in the debtor's business to seize all moneys received on the days that the keeper is present.

All out-of-pocket costs to execute on the judgement are chargeable to the judgement debtor. Costs include garnishment fees, sheriff or bailiff fees, keeper fees, and any fees involved in seizing and selling the judgement debtor's property.

Our attorney will engage in post-judgement discovery if he is unable to locate assets for the judgement debtor. Post-judgement discovery can include interrogatories, requests to produce financial documents, and depositions of the debtor's principals, in order to learn the nature, extent and locations of the debtor's assets. If the debtor does not respond to post-judgment discovery requests, the court can issue a body attachment for the judgment debtor's principal. If that becomes necessary, the principal will be held in jail until he gives sworn testimony in court about his assets.

32.4.2 Appeal

Appeals are limited to cases in which there is a legal dispute as to how the law is applied to the facts of the case. Factual issues can not be appealed.

32.4.3 Bankruptcy

Bankruptcies are controlled by federal law, which prevents any collection effort or litigation from proceeding, so long as the bankruptcy petition is pending. More bankruptcies are being filed as 'no asset' bankruptcies, in which the debtor gives a sworn statement that there are no assets to satisfy creditors.

Creditors are not allowed to file proofs of claim in a 'no asset' bankruptcy, unless the bankruptcy trustee locates assets. In that case, the bankruptcy court will notify creditors to submit proofs of claim. In bankruptcy filings where there are assets and creditors file proofs of claim, it can take from 12 to 24 months to learn if creditor will receive distributions from the bankruptcy estate.

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