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## Debt recovery in France

France is an important commercial partner for companies and private individuals alike within the European Union. The banking system and settlement legislation are comparable to those of other Western countries.

Although international funds flow smoothly between foreign companies, sometimes a French debtor is either reluctant to pay within the agreed time periods or it is facing real financial difficulties. If it is facing such difficulties, then the creditor may be advised to take preliminary protective measures in order to guarantee the recovery of its debts.

A creditor wishing to recover its debt from a recalcitrant debtor should refer the matter to a French attorney. He can then take the following essential precautions before taking the necessary coercive legal measures:

### **I. First stage: before the legal proceedings**

~~✍~~ Enquiries into the debtor's solvency at the Register of companies (for example, to discover whether the debtor is in receivership or is being wound up). If the creditor discovers that the debtor is already bankrupt, it should file a claim with the debtor's representatives. This must be done within two months of the publication of the receivership or winding-up decision in the BODACC<sup>1</sup>. This is extended by two months for foreign creditors). After the time-period has expired, and provided that all legal requirements are met, the creditor may request authorisation to initiate an action for lifting foreclosure. If the debtor is bankrupt, the attorney can take one or more measures to guarantee the creditor's rights, especially if the creditor is a preferred creditor (i.e. has a secured debt) or if both parties agreed to a reservation of title clause.

~~✍~~ Formal notice addressed to the debtor and sent by registered post with an acknowledgement of receipt. This is to allow late penalties to accrue and to allow the debtor a final period of 8 days within which it can pay the debt. The laws and regulations governing debt recovery state that this formal notice is compulsory.

~~✍~~ If the debtor fails to respond to this formal notice, the creditor may find it useful to take protective measures against the debtor's assets. To allow the creditor to do this, the attorney should refer the matter to the *Juge de l'exécution*. He will intervene where there are any difficulties concerning the enforcement of decisions, can authorize protective measures to aid debt recovery, and can request sequestration of the debtor's bank accounts or goods.

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<sup>1</sup> *Bulletin Officiel des Annonces Civiles et Commerciales* – official gazette for civil and commercial notices

If the debtor owns immovable property, it is in the creditor's best interest to request a court order from the judge to create a mortgage against the property. The judge will only authorise this mortgage if that the attorney can prove that it is urgently required to protect the debt, so as to prevent the creditor from organizing its own solvency.

✍️ Creditors often take the precaution of selling their goods on the condition that they receive full settlement for all invoices. French laws and regulations recognise these reservation of title clauses, provided the debtor has expressly or implicitly agreed to this clause. The judge, to whom the authorization to seize delivered goods will be requested, should pay special attention to the way the reservation of title clause is drafted. It should be clear, properly visible and drafted on or before delivery of the goods. The clause does not need to be drafted in French provided both businesses are accustomed to communicating in the other language.

The judge will grant the right to seize the goods sold by the debtor provided that all conditions of validity of the reservation of title clause are met. If the debtor has resold the goods, the judge will also authorize the seizure of the sums still due to the French debtor by the third party, provided that the reservation of title clause has been extended to third parties.

If the debtor is already in receivership, the attorney can start an action before the official receiver for recovery of property within three months of the publication of the receivership or winding-up decision. This is a fixed time-period, which can not be extended.

✍️ Occasionally, the French debtor is put under too much pressure and contacts the attorney in order to reach an out of court settlement and to pay its debt.

## **II. Second stage: the legal proceedings**

If none of the preliminary precautions succeed, the attorney can issue a summons for the debtor to appear in the appropriate court. This is usually the Commercial court local to the debtor's headquarters. For disputes within Europe, the European regulation of December 22 2000 (which replaces the Brussels convention) allows the attorney to decide which court has jurisdiction.

If the parties have agreed to an arbitration clause and therefore both agree to refer any dispute to arbitration, the attorney must submit any dispute to the arbitrator mentioned in the agreement.

✍️ In urgent cases where the debt is undisputed (i.e. where there is no dispute as to the quality of the goods delivered or the amount of the debt to be recovered), the attorney may initiate an emergency procedure called "référé" (summary procedure). This procedure will allow a hearing to be called at short notice during which the creditor, through its attorney, can explain the substance of the case and to prove its debt. As a general rule, a *référé* can lead to a summary order injunction within one or two months. Should the dispute become more complicated, the court will take longer to deliver the summary order injunction. The attorney may also file a *référé d'heure à heure*, which is even faster. However, this procedure implies that the attorney has obtained the preliminary authorization of the judge to call a hearing at such short notice. This is rare in practice.

✍️ If the dispute raises questions, which can not be dealt with by the judge in chambers, the attorney can bring an action regarding the substance of the case (Proceeding as to the substance of the case). Since an emergency procedure is not possible, the Commercial court to which the case was referred will examine the arguments of each party, allowing the debtor to reply with his arguments, the creditor to respond to these, and so on. The whole procedure will last about a

year, depending on any problems raised by the dispute. For example, if the debtor questions the quality of the goods delivered, the court may appoint an expert to decide on these technical aspects of case, (but not on its legal aspects). In this case, the procedure would be suspended until the expert submits his report.

Of course, even at this stage of the procedure, the creditor could still seize the goodwill or the goods. This might convince the debtor to resolve the dispute quickly. Even if it does not, however, it will make enforcement of the decision easier.

~~✍~~ It should be noted that the attorney must be able to give intangible evidence in support its the claim. To do this, good co-operation between the creditor and its counsel is essential.

All documents which are not already in French must be translated into that language. French courts almost never accept oral testimonies. However, handwritten certificates drafted by a witness which follow specific criteria are permissible. Proceedings before French courts are mainly in written form; this is why giving convincing written pieces of evidence is so important.

~~✍~~ Each decision of the French court must be notified through the bailiff to the debtor. Once the bailiff has been notified, an appeal can be lodged against the decision. Where the decision was made by summary order, this must be done within 14 days. Where the decision considered the substance of the case, the appeal must be lodged within one month. Where the decision is to be notified to a person or company resident outside of France, each of these deadlines are extended by two months.

~~✍~~ Payment of the debt: as already mentioned, each decision of the French court must be notified through a bailiff. This is significant not only because the time-periods for appeal or recourse start running from this notification, but also this notification is necessary to enforce decisions and orders which cannot be appealed, as well as temporary enforceable decisions and orders. The attorney will usually request an authorisation from the judge the authorization to temporarily enforce the decision, even if the other side lodges an appeal against it.

Regardless of whether the decision of the court gave was an enforceable one or one subject to temporary enforcement, the bailiff will still seize the debtor's assets if the latter does not pay its debts of its own volition. If there has been a preliminary sequestration of the assets, the creditor may transform sequestration into garnishment, provided the court has given a decision which can be temporarily enforcement. In other words, the creditor can take possession of the assets as payment for the debt.

The plaintiff should pay the bailiff's costs in advance, but he will be able to use the goods seized to repay himself. Of course, most of time it is not enough to seize the assets; a creditor will usually need to sell them. This is usually done at auction and is arranged through an auctioneer. Encumbered immovable properties are also sold at auction in the high court.

~~✍~~ Appeal to the Court of Appeal and to the Cour de Cassation (Supreme Court of appeals): as previously mentioned, the losing party often has the option of lodging an appeal against the decision. On average, proceedings of the Courts of Appeal (of which there are 33 in France) take two years before the court enters its decision. In most cases, the appellant will need to brief a solicitor ("*avoué*"), who will be in charge of some administrative areas of the procedure. However, as for first instance proceedings, it is the attorney ("*avocat*") who takes care of the legal argument and pleads.

If either party is unhappy with the decision of the Court of Appeal, he can then appeal to the *Cour de Cassation*. This is located in Paris and only has jurisdiction in matters of form and procedure. The *Cour de Cassation* will only decide on points of law.

~~✍~~ Costs of a procedure: unlike other countries, law suits in France are almost free. In other words, the plaintiff does not have to pay legal expenses in proportion to the amount of the claim. Of course, there are some charges to pay, but these are very low.

On the other hand, the plaintiff has to pay all expenses related to the work done by the officers of the court in advance. These are: the attorney, the solicitor (for the appeal), the bailiff, the translator and any experts. There is a price list for bailiff and solicitor fees are fixed by a price list, but the attorney's fees are left to the attorney and his client to agree.

Fees vary according to the importance of the case, its difficulty and the experience of the attorney. As a general rule, the fees are calculated on an hourly basis, which ranges from €200 to €300. In practice, the attorney will ask his client to pay a retainer on expenses and fees, so he can advance the costs of the bailiff, as well as the costs of translating the documents in support of the claim.

Overall, the cost of a first instance law suit will amount to about 15% to 20% of the total amount of the debt, depending on the difficulties faced during the procedure and on the amount of the debt to be recovered. Sometimes the client may agree on a lower hourly fee, to which an uplift will be added once the plaintiff has won the case. In this case, one estimates the chances of success of the law suit, being understood that given the unforeseen turn of events the result fee shall represent a more important amount than the hourly fee. Unlike in the United States, contingency fees are forbidden.

If the creditor wins the law suit, some of his costs will be allowed on application of the equity principle provided for in article 700 of the New Civil Procedure Code. In practice however, French courts only allow a successful party to claim a small proportion of his costs. The tax charges of the solicitor are usually supported by the losing party, although paid in advance by each party, which has briefed its own solicitor.

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