

DEBT RECOVERY IN FRANCE
Pallier Lemaitre Vigneron Bardoul – Avocats

Debt Recovery Agencies

- They are commercial structures which seek to recover debts.
- They are non-lawyers.
- This is an expensive method to recover debts.
- They are paid on a percentage basis, minimum 20% of the recovered debt.
- They have no jurisdiction to issue proceedings or execute judicial decisions.

Recovery by Bailiffs

- They are used to execute judicial decisions.
- They have no jurisdiction to issue proceedings.

Recovery by Lawyers

Initial Steps

- Identify the debtor, full name, type, registered office, company number.
- Identify the debt, original invoice, and sale conditions – in order to determine the preferred judicial procedure
- Send letter to debtor via Registered Mail prior to action; it is from this date that interest will run on the debt.

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Attempts at Amicable Recovery

- Commencement by recorded delivery letter from creditor to debtor requesting payment – a letter before action/a final demand.
- Letter may be addressed from creditor or its lawyer.
- This may give rise to negotiations for settlement.
- Amicable recovery is very rare where debtor is in receivership.
- Amicable recovery also possible after proceedings have been commenced.

The Jurisdictions Depending on the Status of the Debtor

- If debtor is a non-commercial entity, jurisdiction is with the civil courts. Either the Tribunal d'Instance for small debts or the Tribunal de Grande Instance handle all other debts.
- If the debtor has a commercial structure (company, agent, distributor etc) the Tribunal de Commerce is proper.
- If the debtor is a public authority, the Tribunal Administrative is proper.
- If the contract is silent on jurisdiction to hear disputes, the court where the contract was executed has jurisdiction, in the main the debtor's residence.
- French lawyers have jurisdiction to plead throughout France notwithstanding the geographical position of their offices, including: the Dom-Toms, La Martinique, Guadeloupe and La Reunion.

Procedures Available

Injunction to Pay Contractual Debt

- Inexpensive method to recover debts which are certain.
- The creditor issues an injunction to pay for the debt due.

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- The debtor is not summoned to the hearing.
- The judge issues an injunction to pay on the basis of the documentation before him.
- The judge must have clear proof of the debt. If the claim is not clear the judge can refuse the injunction.
- The injunction issued **must** be served on the debtor within six months. Bailiff carries out Service. If the injunction is not served within the permitted time, it is null and void.
- The debtor has one month from the date of service of the injunction to oppose the injunction.
- If no opposition is served, the injunction becomes an executory judgement. The creditor may take steps to execute the decision.
- If the debtor issues an opposition in time, the procedure is contradictory; the court will summon both parties to an ordinary hearing (the same as for proceedings by Writ see below).
- The problem with this procedure is that one has no control over delays. The court will render its decision “when it wants,” (from one to three months). If the procedure is transformed into an ordinary debt recovery procedure, procedure is very long, (a minimum of six months).

Summary Proceedings- “Refere Provision”

- A very quick method of recovering debts.
- Service of ‘citation’ on debtor to appear on a particular date.
- There are summary proceedings at least once a week in all jurisdictions and twice in other jurisdictions.
- Proceedings may be served a couple of days before the hearing date chosen by creditor.

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- The debtor is present or represented at the hearing. A default judgement may be issued in the event of debtor's absence.
- The court will render a decision within a few of days of the hearing (7 to 14 days). In some instances, the court may render a decision on the same day as the hearing.
- The jurisdiction is limited to debts which cannot be materially contested.
- The judge will only render a favorable decision if the debt is clear. If there is a serious question as to the nature or extent of the debt, the summary judge has no jurisdiction to render a favorable decision.
- If the matter is complicated or the debtor contests the claim, the judge will no doubt declare the summary jurisdiction incompetent.
- In the instance where the court issues a decision of incompetence, the creditor must issue main proceedings by Writ of Summons (see below).
- A favorable decision may be immediately executed, **even if** the debtor issues an appeal.
- This method is a very successful method for recovering debts.
- These summary proceedings may also be used to ask for the appointment of a judicial expert.

Writ of Summons Before the Tribunal- "Assignment"

- Proceedings are long (a minimum of six months) and are used in the instance where the matter is complex, or where the debtor contests liability.
- Proceedings are issued by way of Writ of Summons served on the debtor – "assignment," 15 days before the first procedural hearing.
- At the first procedural hearing the court will set a time for the exchange of pleadings and discovery.
- These main proceedings take a number of months, (from 6 to 12).

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- The decision rendered does not necessarily have the possibility of immediate execution.
- To execute the decision it must be first served on the debtor.
- The decision is subject to appeal.

Instance Where Debtor is in Judicial Liquidation/Re-Organizes its Debts

- It is important to keep informed as to the solvency of debtors.
- There are strict delays for declaring debts to liquidator/insolvency practitioner (two months from commencement of procedure).
- From date of commencement of administration proceedings- “redressement judiciaire,” no proceedings may be issued against the debtor.
- In the instance where debts are reorganized by the court, creditors who have properly declared the amount due, may receive a pro-rata amount of the debt. The debts may be reorganized over a period of five to ten years. In this instance it is rare that all the debt is recovered.
- In the instance of the transfer of an “insolvent” company by court order, if the company taking the transfer has not agreed to take on the company debts, the creditor will recover nothing and the debts are “wiped out.”
- In the instance of liquidation, debts may be paid in line with the amounts available from the sale of the debtor’s assets.
- Recovery may be possible at the end of liquidation, which may take from six months to several years.
- Recovery are also subject to rules on priorities.
- Where goods are on loan or under finance arrangements, it is important to notify third parties and liquidator of title rights in property to facilitate recovery in the instance of liquidation (specific **registration procedures** must be complied with to put third parties “on notice” of credit arrangements).

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- If the goods are subject to a valid retention of title clause, they may be recovered from the liquidator.
- A debtor having priority must declare this priority from the outset of the proceedings.

Other

- ADR procedures do exist, but they are not used very often.
- Arbitration is commonly used in international litigation.

Execution of Foreign Judgements

- It may be possible to execute foreign judgements.
- One must obtain French recognition of the judgement, via procedure of “**exequatur**.”
- A foreign judgement must be final and not subject to appeal.
- The French court must be satisfied with **due process** (i.e. debtor was properly served with proceedings, all procedural rules complied with and debtor was given adequate possibility to defend itself).
- Once decision of exequatur is obtained, the judgement maybe executed in France against the debtor.

Execution

- Following formal service of a judgement, by bailiff, provided decision is final (not subject to appeal) or has force of immediate execution (‘execution provisoire’), it maybe executed.
- Methods of execution include: arrest of bank account- “saisie attribution;” arrest of real property; taking out legal charge on real property- “saisie immobiliere,”

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and arrest of assets- “saisie vente.” The arrests are operated with the aim of forcing the debtor to pay.

- In the instance of failure to pay by the debtor, a creditor may proceed with the forced judicial sale of the assets arrested.
- The creditor may also arrest debtor’s salary, via service upon debtor’s employer.

Cost of Proceedings

- Can be set in line with the amount of the debt.
- Recovery proceedings may be envisaged even for a small debt. The court and bailiff costs are at the charge of the debtor and the court has the discretion to award amounts for legal expenses.

Prescription

- Ordinary civil actions are time barred unless proceedings are issued within thirty years of the event giving rise to action.
- Commercial actions are time barred unless issued within ten years of the contract.
- There are exceptions to these general rules, reducing the prescription period. It is preferred to consider each individual case in order to determine the prescription period applicable.