

DEBT RECOVERY IN SPAIN

Bonfill Advocats

I. INTRODUCTION

The purpose of this document is to describe the different ways to recover a debt according to Spanish Law.

The suitability of the investigation of the financial position of the debtor in order to grant the success of the claim is common to all the procedures which can be started.

In relation to the fees, except for the “monitorio” proceeding (described below), it is compulsory to be assisted by a solicitor (lawyer) and represented before the court by an attorney-at-law. The fees of such professionals depend on the amount of the debt according to the rules of the professional associations but some Spanish firms calculate their fees as hours worked.

A part from the fees, there is a legal tax payable upon the starting of all kind of proceedings except for the “monitorio”. The amount of such tax depends on the amount of the debt. Natural persons and companies whose annual turnover is less than Euros 6.000.000 do not have to pay legal taxes.

The losing party of a given proceeding is liable for the fees and costs of both, the plaintiff and the defendant.

Concerning the duration of the proceeding, that depends on the court. The summary judgements may take approximately six months and trial judgements may take from one to three years, depending on their complexity. If the court’s decision is appealed, the proceeding may take two additional years.

II. PRELITIGATION

Settlement without a court action

It is always advisable to attempt to reach an agreement by contacting the debtor before starting proceedings. In some cases (executive proceedings coming from the non payment of loans, for instance) it is compulsory to give evidence (by means of a certified letter or a bur fax) of such communication.

Credit search before the litigation

This is another point to be considered before starting proceedings. It is advisable to order a report on the solvency of the debtor. There are some companies specialized in getting information concerning the income of the debtors, their labour situation, if they receive an income or remuneration from the Government, etc...

III. LITIGATION

The recovery procedure depends on the size of the debt and on how it is arisen.

Under Spanish Law there are the following types of proceedings:

DEBT RECOVERY IN SPAIN Bonfill Advocats

Trial judgements:

Ordinary proceedings: for debts exceeding Euros 3.005, or when the amount of the claim can not be determined in advance.

Verbal proceedings: for debts not exceeding Euros 3.005.

The proceeding starts with the lawsuit, which will be served on the defendant, who should present a defence to the court. After these first steps, a hearing takes place in order to reach an agreement, rectify material mistakes, make complementary pleadings or denounce the breach of procedural rules.

If no agreement is reached in the hearing, the proceeding goes on with the evidence period. After it, the court can order specific measures to clarify issues or facts which remain uncertain and gives judgment, which can be enforced if the plaintiff makes an application. There is a right of appeal against judgments to the Court of Appeal.

Summary judgements:

“Monitorio”: for debts not exceeding Euros 30.005, being the debt supported by any of the following documents:

Documents concerning the debt signed by the debtor.

Invoices, delivery notes, telegrams or telefax.

Documents proving the existence of the debt accompanied by documents determining the existence of a commercial relationship between the parties.

Debts to the real estate ownership when certifications of non payment have already been issued.

According to the rules of this proceeding, after the service of the writ of summons, the defendant has the opportunity to pay the debt or to oppose within the period of 20 days. If there is no response of the debtor the proceeding continues as an *“Executive proceeding”* and if the defendant’s opposition is placed in the court, the proceeding goes on as a verbal or an ordinary proceeding, depending on the amount of the claim.

“Cambiarío”: claims which are supported by any of the following documents:

Bill of exchange.

Cheque.

Promissory note.

Executive proceedings: claims which are supported by any of the following documents:

Public deeds.

Loan contracts.

DEBT RECOVERY IN SPAIN

Bonfill Advocats

Leasing contracts; Judgements:

According to the applicable law, the “*Cambario*” and the “*Executive proceedings*” allows the immediate seizure of the debtor’s goods upon starting actions against him. Due to the summary nature of these proceedings, the matter can be discussed again in an ordinary or verbal proceeding

Timing:

A summary proceeding may take approximately six months, while an ordinary or verbal proceeding can take from one and a half to three years, depending on its complexity. If the court decision is appealed, proceeding may take an extra two years.

Fees and Costs:

Except for the “*Monitorio*” proceeding, it is compulsory to be assisted by a solicitor (lawyer) and an attorney-at-law. According to the rules of the professional associations the fees of such professionals depend on the amount of the debt.

There is a legal tax payable upon the starting of all kind of proceedings except for the “*Monitorio*”. The amount of such tax depends on the amount of the debt. Natural persons and companies whose annual turnover is less than Euros 6.000.000 do not have to pay legal taxes.

The losing party is liable for fees and costs of both, the plaintiff and the defendant.

IV. POST LITIGATION

After the judgment, it is necessary to enforce the judicial decision. That means that another judicial procedure (the executive) will have to take place.

If the judgment has been appealed, it is possible to ask for the enforcement prior to the final judicial decision.

V. OTHER MEASURES; ARBITRATION

Prior to the arising of any dispute the parties can agree to use arbitration instead of the courts. In Spain, an arbitrator’s decision can be enforced by the court.

Legal entities may prefer arbitration as the proceeding is quicker than the judicial ones and the final decision is not public.

DEBT RECOVERY IN SPAIN
Bonfill Advocats

VI. OTHER CASES

Proceedings differ when there has been a suspension of payments by the debtor, or that is to say when the creditors have agreed on a repayment/business plan proposed by the debtor.

If an agreement cannot be reached, or if the debtor does not follow the repayment/business plan, the Court will declare the company's bankruptcy. If the debtor is no longer creditworthy the Court may make this declaration without previous suspension of payments proceedings.

In these cases, creditors are paid in order of priority. However, creditors are unlikely to recover the full debt, primarily because the fees of professionals participating in these proceedings must be paid first.