

Summary of LIC Group discussions in Krakow, June 2018 about Cross border debt collection:

There were participants from the following countries in the 5 groups that all had to answer 5 questions: Poland, Greece, Germany, Malta, Ireland, Ukraine, USA, Iceland, UK, Netherlands, Sweden, Spain, Italy, Denmark, Canada, Bahrain, Portugal and Norway.

Moderator Rune Ohlgren asks for the understanding that because of several good discussions under each group's presentation, it is not possible to reproduce all details and exceptions from what we must call the main rule. Moderator cannot take responsibility for any errors in this summary, but encourages those who detect any important errors, to submit their corrections / clarifications.

Task 1:

Are there any laws or regulations in the country you represent that make it illegal for debt collection companies in other countries to send debt collection / payment requests to debtors in "your" country?

Answer: The **main rule** is that letters are sent across borders. Specific countries that respond to this are: Bahrain, Denmark, Germany, Greece, Iceland, Ireland, Italy, Malta, Norway, Poland, Portugal, Sweden, Spain, UK and Ukraine.

Comments against: Canada in law, but in practice widely done. Challenge could be raised. No one has ever got any fine or verdict against the practice. So why not send letters across boarder? (Ref. Franklin & Franklin from Canada).

Germany: Ok to dunning letters sent to debtors in Germany as long you act exclusively from creditors domicile and the claim is according to a contract.

In one group they also made a note that it is probably not ok to send these letters in UK, but in other groups with representatives from UK – they both said it is not any problem.

In USA it depends on the state that is involved – some few states have more strict rules than others.

Task 2:

Will the answer be different depending on whether it is B2B or B2C collection?

Answer: As main rule does it not matter if it is B2B or B2C. Which means that answer under question 1 is applicable.

Comments against: Collection costs can differ between B2B and B2C.

USA: Depends on which state in US is involved.

Task 3:

B2C example: Would your answer (on behalf of country 2) change if the background for the debt is a contract such as promissory notes, credit card agreement, rental agreement and other written agreements in a B2C files (and this agreement was concluded by both in country 1)?

Answer: Letters can be sent from country 1 to country 2:

Yes: Bahrain, Canada, Denmark, Germany, Greece, Iceland, Ireland, Italy, Malta, Netherlands, Norway, Poland, Portugal, Sweden, Spain, UK, USA and Ukraine.

No: No country

Task 4:

B2B example: Purchase agreement, delivery of goods or services according to an agreement in written or oral, (but if only verbally, the claim must be verified through other proofs such as order confirmation, email dialogue, delivery documents etc.). The debtor knows that they have purchased the goods / services from country 1.

Answer: Letters can be sent from country 1 to country 2:

Yes: Bahrain, Canada, Denmark, Germany, Greece, Iceland, Ireland, Italy, Malta, Netherlands, Norway, Poland, Portugal, Sweden, Spain, UK and Ukraine.

No: Canada in law no, yes in practice. 1 from UK and US has a note that it might depend on applicable jurisdiction.

Task 5:

Disputed files: What if creditor or we as creditor's representative receive a dispute from debtor and the contract states that disputes shall be decided by courts with use of creditor's venue / jurisdiction in country 1. Is it then ok for country 1 to send debtor in country 2 the necessary notice of legal action?

Answer: Letters can be sent from country 1 to country 2:

Yes: Bahrain, Canada, Denmark, Germany, Greece, Iceland, Ireland, Italy, Malta, Netherlands, Norway, Poland, Portugal, Sweden, Spain, UK and Ukraine. (Remark: Also, in Quebec, Canada.) It is actually a demand that this notice must be sent has one of the groups specified.

No: 1 from US has a note that it might depend on applicable jurisdiction.

One group also made a note that there are numerous exceptions such as property matters, debtors right to have the case led in local court.

Conclusion:

We can conclude that the industry sends letters across national borders and it does not matter if it is a B2B or B2C case.

It is even greater consensus that in terms of collection of contractual debt, you can send debt collection letters across borders. (As long as the contract does not say anything concrete otherwise.)

The first debt collection company that receives the file from their local customer must have the right to notify the debtor of the debt. And if no payment, then notify about the use of a local debt collector or legal action. Particularly in contractual matters which regulate that unpaid debt will be collected according to creditor's jurisdiction.

Please be aware of some exceptions in some states in USA and the fact that Canada has a law that basically says no to letters across border. But everyone in the industry still sends letters across national borders in and out of Canada.

One of the UK participants pointed out that there is uncertainty about these issues, others from the UK were less concerned about this.

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