



## EXTRAJUDICIAL DEBT COLLECTION

In order our clients may continue commercial relations with debtors if they will, we always try to maintain the relationships between both parties. We contact debtors both by phone and in writing by post and email. When there is a dispute, we aim to reach an amicable solution between creditor and debtor.

BBM ABOGADOS INTERNATIONAL COLLECTION tries to collect the debt through amicable contacts and negotiations. These amicable efforts include the elaboration of the required written agreements contracts and payment plan schedule till the effective recovery of the debt

**Regarding Interest and collection costs**, we always charge accrued interest to debtors or any other amounts that have been agreed on by contract between the parties.

Despite of Directive 2011/7/UE and some other local rules related to debt collection, Spanish debtors are very reluctant to pay interest and collection costs during the amicable phase although we always try to negotiate the payment of them also with the principal amount claimed.

In those cases where debtor is located but we are not able to obtain satisfactory results, we may request the service of a local lawyer who will deliver a letter before action at hand at debtor's domicile and will assist in determining if debtor is really located and it is worth to go legal or not. The cost of this service is of 100 Euros and will be charged always after client's approval.

**Regarding statute of limitations** the law 42/2015 Civil Procedures' modification changed the prescription period, establishing a general prescription period of 5 years for debts generated after 7 October 2015. For debts prior to that date, the general prescription period is 15 years, starting from the day after the invoices are due.

There are some specific periods of statutes of limitations for some specific services such as:

Transportation claims prescribe within 1 year for land transport and maritime transport, starting from the dates of the payment obligations.

Medical, pharmaceutical, and other professional services prescribe within 3 years from the date they finished.



This period is interrupted in the following cases:

- ✓ When creditor claims payment at Court or make an extrajudicial claim by fax or notary requirement with acknowledge of receipt showing evidence of this interruption.
- ✓ When debtor performs an act of acknowledgement of the debt

The statute of limitations must be claimed by the defendant in legal proceedings and is never declared by the court.

As a law firm, BBM ABOGADOS INTERNATIONAL COLLECTION advises the client on the convenience of whether to initiate the appropriate legal proceedings or not.

## **LEGAL PROCEEDINGS**

In Spain, the jurisdiction is divided by the kind of matter of each case. For cases regarding debt collection, in principle, the court is the first instance civil one presided by one judge. This judgement may be appealed in the second instance (in this case, it is a body composed of three judges) in the presence of the regional court, called Audiencia Provincial.

The third instance “Recurso de Casación” in Spain is based on restricted reasons, and any claims that do not meet the criteria will be rejected.

The main proceedings for debt collection are two:

- ❖ Payment Order Proceeding o Procedimiento Monitorio.

The documents requested are the supporting documents of the debt: invoices, and a clear statement of account and under our law is compulsory the power of attorney to act on client's behalf in favor of lawyers and Procurators.

This PoA must be apostilled according to Hague Convention if it is granted before a Public Notary. If the PoA is granted before the Spanish Consulate in the country of the creditor there is no need of apostille.

This kind proceeding is only applicable for monetary debts (less than EUR 250,000) and only when debts are due and payable and not disputed. The court will declare creditor's right to be paid and will urge debtor to pay in 20 labor days otherwise debtor's assets would be immediately seizure.



If the debtor does not accept, they may oppose and the proceeding will turn into an ordinary proceeding (either “Ordinario” or “Verbal” depending on the amount involved).

In case debtor pays the procedure will end. If debtor does not pay or oppose then an enforcement procedure will start.

❖ Declarative proceeding

A regular lawsuit (“Ordinario” procedure or “Verbal” procedure) is initiated directly either after the amicable collections have failed, or when the solvency of the debtor is satisfactory, or in case there is a prior dispute between the parties.

Both the plaintiff and the defendant will submit allegations and the Judge will appoint both parties to the preliminary hearing.

The preliminary hearing is the pre-trial hearing. Matters that can be dealt with at this preliminary hearing, at which all the parties should be represented, include reaching agreements or settlements, remedying defects of procedure, specifying the questions in dispute and questions of admission of evidence to be decided then and there by the Judge.

Further, at this preliminary hearing, if no additional proof of evidence is required, the Judge may proceed to order judgement. In any other case the Court will set down the day and time for the trial.

The object of the trial is to hear the evidence that has been judged admissible and the summing-up of the advocates based on the evidence and the legal arguments. After that the Judge issues the judgment. This judgement is not definitive and can be appealed.

**Regarding Appeals:** Appealing the judgment is possible within 20 days since the notification of that resolution and will be ruled by the higher regional court (Audiencia Provincial)

**Regarding Court fees:** They must be paid at the commence of the sue otherwise the lawsuit will not be accepted by the court. The costs depend on the legal proceeding:

Court fee for “Monitorio” procedure is 100 Euros

Court fee for “Ordinary” procedure is 300 Euros

These taxes are not rechargeable to the debtor and cannot be reimbursed in any case, except if both parties reach an agreement during the legal proceedings.



### **Regarding time frame of legal proceedings:**

The average duration of a legal process depends on the steps of every procedure and how busy the courts of every city are. From our experience the “Monitorio” procedure may take around 4-6 months and the “Ordinario” procedure may take more than a year till the Judgement is issued by the Court judgment.

### **Regarding Costs and interest at Court:**

There are different costs involved in a legal proceeding:

- a) Lawyers' fees
- b) Procurator fees
- c) Court fees
- d) Miscellaneous costs like witnesses, experts' reports, translation

A budget with a cost estimation will be provided on a case-by-case basis should legal action become necessary.

Under Spanish law It's not possible to start legal proceedings only for interest or costs, but these amounts are always included in the judgement when defendant is condemned: debtor will be obliged to pay the principal amount plus interest and professional fees involved (Lawyer and Procurator).

## **ENFORCEMENT OF JUDGMENTS**

Once a judgment is issued by the court and the parties do not appeal in the legal period, the judgment becomes definitive. The condemned debtor will have to serve the judgment within 20 days following its publication. There are two possible ways to enforce a judgement depending on the judgement of first instance- if provisional or definitive).

- Provisional enforcement

Spanish law allows provisional enforcement of the first instance judgment when the debtor condemned by first instance Court claims a resource of appeal and it is admitted. To put it into effect, it has to be requested by writing to the same court of first instance that has issued the judgment that pretends to be revoked by the Superior Court (Audiencia Provincial)

- Enforcement of definitive judgments

Should the condemned debtor not pay within the 20 days term after the publication of the judgment, the enforcement party can submit an execution claim to the court, appointing the debtor's assets known and even asking the Court to investigate debtor's assets to cover the total amount of the enforcement (compounded by the total amount of the judgement plus 30% for interest and enforcement costs).



## **INSOLVENCY PROCEEDINGS O “CONCURSO DE ACREEDORES”**

The goal of insolvency proceedings is to restructure the debtor company to pay out all their creditors with the same percentages of their debts' value by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

If a bankruptcy proceeding is started, then all the enforcement proceedings against debtor declared in bankruptcy must be suspended.

Depending on the volume of debts the proceeding may be:

- ✓ Abbreviated

This kind of insolvency proceedings can be managed by an insolvency mediator. It's more flexible and shorter than the ordinary one and it is applicable just to insolvencies fewer than 50 creditors and lesser than EUR 5 million. The main features are that payment schedule will not be longer than three years and the percentage discount not higher than 25%.

- ✓ Standard

These bankruptcies are managed by the Commercial Court and depending on the starting party are called:

Voluntary Proceeding: Issued by the debtor when the debtor company is in a bankruptcy situation

Compulsory Proceeding: Issued by a creditor when the debtor company is in a bankruptcy situation

Once the insolvency situation is declared by the Court, the trustee in bankruptcy is appointed by the Court. They work as a legal manager of the debtor company during the proceedings.

The trustee in bankruptcy is compounded by a lawyer, an economic expert and one of the main creditors. The bankruptcy situation of the debtor also with the details of the proceeding is published in the Official State Gazette. This publication is of a high relevance because it shows the term for creditors to lodge their credits to the trustee. This term is of a month for Standard bankruptcy and 15 days for Abbreviate

Creditors then, must lodge the credits explaining the amount, the qualification, and the supporting documents of them: invoices and delivery notes and some other useful information for their credits to be recognized.



Once the period for lodging is finished the trustees of the bankruptcy will prepare a provisional report with a list of all the credits recognized and a balance sheet including the active and passive claims to the debtor company.

If any creditors consider their credits have not been properly recognized, they can claim an incident before the trustees. Once the incidents are studied and resolved, they will issue the definitive report with the definitive list of creditors.

When this common phase ends, we may find two scenarios:

- If the debtor company has assets enough, they will present a payment plan to the creditors which will include a percentage discount and a and a payment plan in a balance sheet. Creditors may accept or reject the payment plan proposed at the creditors meeting. If the debtor gets approval from more than 50% of all the creditors, the agreement will be homologated by the court and will be binding for all the creditors of the list not just the ones with favorable vote.
- If debtor does assets enough for a payment plan or cannot obtain the 50% of favorable votes, the debtor company will be liquidated, and the creditors will recover their debts depending on the total amount recognized and the qualification of their credits.

Most of bankruptcies becomes to liquidation which means that there are very few possibilities to recover any money by the commercial creditors.

### **PRE-INSOLVENCY**

The aim of this proceeding is to allow debtor to negotiate with creditors during a period and make possible they may continue with the business avoiding bankruptcy proceeding.

In these cases, the debtor will inform the Court about the situation of insolvency they are affording and their will to obtain a payment plan schedule with their creditors.

If this is accepted, it will be homologated by the court.

However, if it is not possible an agreement after the three months since the communication to the court because debtor is not able to obtain three-fifths of the creditors' approval, the debtor must start bankruptcy proceedings within the next month.

During this pre-insolvency proceeding, the debtor company will not be considered insolvent, so all the legal procedures and lawsuits will continue active.



The duration of a bankruptcy proceeding depends on the fulfillment of the payment plan agreed, or the result of the liquidation of the assets of the company but takes a lot of years till it is finished.

## **ARBITRATION AND MEDIATION**

There are other options to solve a dispute avoiding litigation: arbitration and mediation or conciliation. These options have advantages: Arbitration is quicker, cheaper, and there are not appeals however this means excluding the jurisdiction of the ordinary courts but the laudo arbitral is binding for both parties.

Arbitration in Spain is based on the rules of Arbitration Law 60/2003 and Law reform 11/2011.

Mediation or conciliation proceedings tries to find an agreement with the participation of the parties and create a win-win situation for both creditor and debtor.

Mediation or conciliation is performed by professionals: the Chambers of Industry and Commerce or by professional mediators. The resulting agreement is not a judgment, and the parties can ignore the mediator's advice if they wish.

Saludos cordiales, With kind regards, salutations distinguées

Belén Dominguez

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