



EURAVOCAT LAW HANDBOOK

# DEBT COLLECTION IN PORTUGAL

From our member in Oporto



## 1. Amicable collections

### General information

If all amicable debt recovery actions have been tried (e.g. sending letters by mail to debtors along with faxes, phone calls, and emails) and it's still not possible to collect the debts within 30 days, it is analyzed whether it would be viable to file a lawsuit.

## Interest

In this type of collection, it will be difficult to collect costs and interest from debtors, however, if these costs are established in the general conditions of sale, there are greater chances to claim them. It will be possible to settle agreements with or without interest, depending on the payment plans in place. In legal proceedings, there is always interest to claim, with the interest rate in 2020 set at 8%.

## Debt collections costs

Concerning the costs to be charged to debtors, it's an indemnity no lower than EUR 40 for internal administrative collection costs, regardless of the right to prove other reasonable costs.

## Prescription

According to Portuguese law, there are two prescription periods regarding invoices covering the supply of goods:

- An ordinary delay of 20 years (article 309.º, Civil Code);
- A delay of 2 years, which only applies to traders' credits resulting from goods sold to non-traders (article 317º, paragraph b), Civil Code);

## Types of companies

- “Sociedade Anónima” (S.A.) – the minimum amount of share capital is €50,000 (article 276º, nº. 5, Commercial Company Act);

- “Sociedade por quotas” (Lda.) – the minimum amount of share capital is freely set in the articles of association, corresponding to the sum of the shares subscribed by the partners.

## Sources of information

In Portugal, we have access to the database of Atradius Crédito y Caución (ACYC), the credit insurance company of the Atradius group, and of the business information partner, IBERINFORM. They include financial reports and risk evaluations of Spanish and Portuguese companies. Using the information from these reports, along with other information obtained, it's possible to understand the financial situation of debtors and advise them on the next steps in the process. The information contained in these reports includes official P&L accounts in recent years that companies must present annually, including sales volume, income, and the likes.

After verifying all the information, the following steps are taken, and a final report is written, with a summary of all the efforts. If the traced debtors have solvent companies, assets, and are still open and trading, the viability of legal action as the last resort will be studied.

## 2. Retention of title

According to the Portuguese Civil Code (article 409<sup>o</sup>), it's possible to reserve the legal ownership of the goods to the supplier, if the ownership is associated with a certain service or goods, through the incorporation, in the contract a retention of title clause.

For this clause to be valid, it must be formulated in writing and expressly accepted by the buyer. If the buyer hasn't definitively accepted it, the clause may be disputed by the buyer. However, if the object of the contract is subject to registration, the retention of title clause will also be registered to be effectively enforceable against third parties.

Legally, the supplier, having sold goods with a retention of title clause, is protected against legal measures that may come to affect him, as is the case in executive or insolvency proceedings.

### 3. Safeguarding measures

Within the scope of negotiations, efforts will always be made to obtain private documents signed by the debtors recognising their debts. The documents can be signed by a notary, but this is usually not done due to the high costs for both parties. The main advantage of documents signed by debtors is that they can be used in future legal claims as evidence. Debtors may also offer other forms of security, such as mortgages, debt assignments, or bank guarantees.

### 4. Legal Collections

#### General information

Through the lawyers' network, they establish whether it's advisable to start legal proceedings, evaluating whether the costs

will be effective in terms of the amount of costs and time. If the debtor is not trading nor has any assets, it makes no sense to prepare for possible legal action.

In case of a lawsuit, it is necessary:

- A power of attorney;
- Copies of the invoices;
- The CMR or any other documents that prove the merchandise or service delivery to the debtor;
- The original cheques or bills of exchange issued by the debtor;
- Any documents signed by the debtor in which the debtor acknowledges the debt;
- Any other documentation shared between the parties.

## Lawsuits

Once a decision has been made to start legal proceedings, it will be determined what kind of legal proceedings it should be used to claim the debt. There are two types of proceedings:

- Simple claim (“Injunção”): procedure that allows a creditor of a debt to obtain an enforcement order, which allows him to resort to a judicial process of execution, to recover from the debtor the amount that he owes him. It may be attached when a debt equal to or less than €15,000 is involved or a debt resulting from a commercial transaction (in the latter case, only when the contract has not been concluded with a consumer);

- Claim (“Ação declarativa”): this type of judicial process is used when strong opposition from the debtor is expected and, if the court issues a favorable sentence, it is possible to execute with collection costs;

To start legal action, a draft of a power of attorney will be prepared, the presence of a notary in Portugal is not necessary, however the document must be signed and printed on headed paper.

### **Appeals:**

If a party disagrees with the judgment, the right to appeal to the higher court remains.

The most common appeal in Portugal is “Recurso de Apelação” (article 644.º and following of the Code of Civil Procedure), with a period of 30 days to appeal after notification of the original decision.

The average length of legal proceedings depends on the kind of procedure and whether the case is at 1st or 2nd instance, with “Injunção” proceedings taking around 3 months and “Ação declarative” taking more than 1 year to obtain a court decision.

Court fees are determined by the court and are not subject to any negotiation. All costs depend on the outstanding principal amount and are calculated based on percentages, with a range of different fees that may apply during the proceedings, depending on the outstanding amount owed, making it difficult to predict the total cost. Costs of witnesses and experts’ costs may also arise,

especially when there is a dispute. Cost estimations can be provided on a case-by-case basis should legal action become necessary.

In legal proceedings, interest will always be claimed.

## 5. Insolvency proceedings

### General information

Whoever has a credit against the debtor, may apply for its insolvency, provided that the debtor is in a situation that doesn't allow him to pay his overdue obligations (after presenting relevant proof).

To prove a credit against the debtor, the applicant may provide missing invoices, unpaid bills of exchange or cheques.

The aim of the insolvency proceedings is pay out all creditors the same percentages of their debts' value by liquidating the assets of the debtor company or collecting the enforceable income from the individual declared bankrupt.

### Proceedings

Once the debtor has applied for insolvency and knowing the details of the insolvency proceedings' data, a draft of the writ is usually prepared to be completed, signed and sent to the

practitioner or the court, being sent by mail with instructions on how to lodge the credit. If Atradius is to lodge the credit, a specific power will have to be issued to enable Atradius to act on behalf of the insolvency proceedings.

In Portugal, after the official publication in the Official States Bulletin (Diário da República), you have 30 days to lodge the credits and they will be included in the general list of creditors within the period established by law. Once the practitioner receives all the claimed credits, he must present a payment plan that should establish the renegotiation of the principal amounts with the unsecured creditors, the period over which the payments will be made, support requests from the unsecured creditors, among other matters.

Thereafter, a creditors' meeting will deliberate on keeping the debtor company in business, suspending liquidation, maintaining the current management of the debtor company, and demanding the debtor to put forward an insolvency plan.

Proceedings are lengthy and normally creditors don't get paid (may be 40% for approximately 7 to 8 years). Of course, the proposal offered to the creditors will not start to be paid until 2 years after the conclusion of the legal proceedings, which means that the total time span could be 10 years.

### **Processo de Revitalização (PER)**

PER is a special refinancing process to help companies with financial problems. Since its official publication by the court,



creditors will have 20 days to communicate their credits. A period of 2 months (extendable to 3) will be opened for the parties to negotiate an agreement to help the debtor company's financial restructuring.

During this period, all other processes (lawsuits or insolvency requests) are paralysed, activated again when the PER ends.

Negotiations can end with or without approval of the recovery plan. The process can also end because the debtor fails to reach an agreement, or because the 3 months of negotiation are exceeded without an agreement. In the last two situations, the closure of the PER will imply the debtor's insolvency declaration within 3 days of the communication of the end of the negotiations.

To lodge a claim, it's necessary:

- A power of attorney;
- Copies of the invoices;
- An updated statement of the debt account;
- Any documents signed by the debtor, in which the debtor acknowledges the debt;

The deadline to lodge claims after publication in the Official State Gazette is one month. The whole duration of the insolvency proceedings is from 2 to 10 years.

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This is a reference work and collection of instructions, that is intended **to provide ready reference**

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