EURAVOCAT LAW HANDBOOK

DEBT COLLECTION IN SPAIN

From our members in Madrid and Barcelona

1. Extrajudicial collection of monetary claims

Before filing a claim for payment, it is advisable to exhaust the out-of-court channels by sending a formal demand for payment, informing the debtor of the existence of the debt due, liquid and

enforceable, the amount owed (principal plus interest, if applicable) and the due date for payment, giving a reasonable period of time to meet the payment, and warning that, if the demand is not met, the appropriate legal actions will be initiated in defense of the legitimate interests of our client.

In relation to the amount to be claimed, it is necessary not only to determine the amount of the principal debt according to the title available (invoices, check, promissory notes, bills of exchange, etc.), but also to determine whether it is possible to claim default interest and collection costs that may have accrued.

Interest on late payments:

The Spanish Civil Code provides that, in order to claim interest for late payment from the due date of the debt, the interest must have been expressly agreed in the contract or there is a Law that expressly declares it.

In general, if the accrual of interest has not been expressly agreed, Article 1,108 of the Spanish Civil Code provides that **legal interest (3.25%)** shall accrue from the time the creditor demands performance of the obligation from the debtor, either extrajudicially or judicially.

Hence the importance of determining the debt (principal + interest in arrears) as soon as possible and claiming it out of court, since otherwise only the interest can be claimed from the filing of the lawsuit.

In relation to debts between businessmen or traders, special mention should be made of Law 3/2004, of December 29, 2004, which provides that, in the absence of an express agreement, and without the need for notice of maturity or extrajudicial demand by the creditor, the legal rate resulting from the sum of the interest rate applied by the European Central Bank to its most recent main financing operation carried out before the first day of the calendar six-month period in question plus eight percentage points may be claimed. This interest rate is currently **12.00%**.

Internal costs related to debt collection:

Likewise, in relation to existing debts between businessmen or traders, by virtue of the referred Law 3/2004, of December 29, which transposes art. 6.1 of Directive 2011/7, of February 16, when the debtor incurs in default the creditor is entitled to claim in addition a fixed amount of 40 euros for each of the unpaid invoices for internal collection costs, without the need for an express request to the principal debt, without prejudice to being able to claim all duly accredited collection costs suffered due to the default and which exceed the indicated

amount of 40 euros per unpaid invoice.

Prescription according to Spanish and Catalan legislation:

In general, according to the Spanish Civil Code, the term to be able to claim any payment to be made in years or in shorter terms is **5 years** counted from the date when the obligation can be demanded to be fulfilled. In the case of debts for non-payment of supplies (telephone, water, electricity, etc.), the statute of limitations expires after 3 years.

According to the Civil Code of Catalonia (applicable to legal/ commercial relations agreed in Catalonia), the statute of limitations for claims generally prescribes **ten years**, except for claims relating to periodic payments to be made for years or shorter periods and claims for collection of the price in consumer sales, which prescribe after **three years**.

The computation of the statute of limitations period does not exclude non-working days or holidays. The computation of days is made by whole days. The initial day is excluded and the final day must be completely fulfilled. The computation of months or years is made from date to date. If in the month of expiration there is no day corresponding to the initial day, the term is considered to end on the last day of the month.

In both Spanish and Catalan legislation, the statute of limitations of actions is interrupted by their exercise before the Courts or

the commencement of arbitration proceedings relating to the claim, by extrajudicial claim of the creditor and by any act of acknowledgment of the debt by the debtor.

Special mention is made to the Exchange and Check Law, applicable in the case of securities, bills of exchange, checks and promissory notes, where it is established that the exchange action against the acceptor prescribes after three years, counted from the maturity date. However, the holder's action against the endorsers and against the drawer will be barred after one year. Likewise, the action of one endorser against the other endorsers and against the drawer shall be barred after six months.

Sources of information on the debtor's creditworthiness

- Delinquency Databases and CIRBE (Central Credit Register of the Bank of Spain).

In Spain there are several companies dedicated to the management of delinquency files, an activity that in many cases they combine with that of providing corporate information to companies. A total of 130 companies and entities compile default registers. The best known are the Asociación Nacional de Establecimientos Financieros de Crédito, better known as **ASNEF-EQUIFAX**, the Registro de Aceptaciones Impagadas or **RAI**, which depends on the **Centro de Cooperación Interbancaria (CCI), Dun & Bradstreet** and **Experian**

Bureau de Crédito (Badexcug).

On the other hand, CIRBE is a database that collects information on loans, credits (direct risk), guarantees and collateral (indirect risk) that each reporting entity maintains with its customers. On a monthly and aggregated basis, CIRBE provides reporting entities with information on individuals whose accumulated risk exceeds 1,000 euros. Anyone can access, free of charge, the information registered in the CIRBE about themselves, but at the same time it is confidential, as the information about other people cannot be accessed.

- Commercial reports

These reports, prepared by specialized companies such as Axesor, provide reliability, since they are prepared with data from official public sources. The most common is the BORME (Mercantile Registry Bulletin) as well as the BOE (Official State Gazette), the Provincial Bulletins, and the press.

In addition, Atradius Crédito y Caución (ACYC), the credit insurance company of the Atradius group, and business information partner IBERINFORM provide financial reports and risk assessments of Spanish and Portuguese companies. Using the information in these reports, together with other data obtained, it is 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 the official profit and loss accounts for the last few years that companies are required to submit annually, including sales volume, income and the like.

- Public Records:

There are other external sources of public access, such as the Public Mercantile and Property Registries, from which you can also obtain information on the debtor. To obtain such information it will be necessary to know at least the DNI, name and surnames, if it is a natural person and if it is a company, the CIF of the company, social denomination. If you have the name and surname of the administrators and DNI, even better.

Acknowledgment of debt

Within the framework of the out-of-court negotiations it is advisable to sign with the debtor an acknowledgment of debt, that is to say, a contract by which the debt is acknowledged in the sense of wanting to consider it as existing against the one who acknowledges it, being even possible to reach an agreement on a payment plan, debt reduction, interest, in each case, or even to agree on other forms of payment guarantee, such as mortgages, debt assignments or bank guarantees. Such an agreement, even if it is not fulfilled, will be very convenient in the future as evidence in a judicial proceeding.

It is important to note that an acknowledgment of debt does not necessarily establish the existence of the debt itself, but rather acknowledges and documents it.

In addition, an acknowledgement of debt is very useful in situations where the debt has not been formalized in writing or when you want to establish new terms and conditions for the payment or repayment of the borrowed money.
Such a document may in the future evidence in written form the existence of the debt and the existing agreements between the parties involved.

Such acknowledgment of debt may be made public by signing it before a notary public. However, in practice, it is usually agreed only in private document, providing that it may be elevated to public deed, at the request of any of the parties, with the other party having to appear before the Notary on the appointed day.

In this case, it is usually agreed that all expenses incurred in connection with the acknowledgment of debt will be borne by the debtor, with total indemnity of the creditor party.

However, the way in which the expenses are distributed (notarial, fees, taxes...) may vary according to the circumstances and agreements reached.

3. Judicial Proceedings

General information

Once out-of-court proceedings have been exhausted, without having been able to reach an agreement or acknowledgement of debt for payment, the client will be asked whether or not it is advisable to initiate legal proceedings, taking into account the client's interests, cost and feasibility of collection.

In order to initiate a judicial procedure for claiming an amount, it is necessary to pay the following prices:

- ✓ The debt must be due and payable.
- ✓ Address or addresses of the debtor or the place where they reside or can be found.
- ✓ Title by which we assert the right to collect:
    - Contract, if it has been formalized in writing, or any other document evidencing the commercial relationship between the parties (such as the delivery of the goods or the rendering of the service to the debtor);
    - Copy of invoices;

- Original checks or bills of exchange issued by the debtor;

✓ Payment demands together with the respective proof of mailing and delivery and, if applicable, the agreements or acknowledgments of debt signed by the debtor;

✓ A power of attorney for lawsuits or power of attorney apud acta authorizing a solicitor to represent you in court if the amount claimed is less than 2,000 euros;

Type of legal proceedings for claiming an amount:

When the non-payment cannot be resolved out of court, the Civil Procedure Law provides for different ways to claim the debt judicially depending on the title and amount:

ORDER FOR PAYMENT PROCEDURE:

The payment order is a special, simple and fast judicial proceeding, specifically aimed at claiming the collection of a monetary debt, regardless of the amount; provided that the debt is due and payable, determined, that is to say, that the debt is accredited in any of the following ways:

1. By means of documents, whatever their form and type or the physical support on which they are found, which appear signed by the debtor or with his seal, stamp or mark or with any other sign, physical or electronic.

2. By means of invoices, delivery notes, certifications, telegrams, telefaxes or any other documents which, even if unilaterally created by the creditor, are those that usually document the credits and debts in relations of the kind that appear to exist between creditor and debtor.

Notwithstanding the foregoing, in the case of debts that meet the aforementioned requirements, the payment order process may also be used for the payment of such debts in the following cases:

- ✓ When, together with the document stating the debt, commercial documents proving a previous lasting relationship are provided.
- ✓ When the debt is accredited by means of certifications of non-payment of amounts owed in concept of common expenses of Communities of owners of urban properties.

The claim must be filed in the Court of First Instance of the debtor's domicile or residence or, if these are not known, in the place where the debtor can be found for the purposes of the Court's order for payment, except in the case of a claim for amounts owed in respect of common expenses of Communities of owners of urban properties, in which case the Court of the place where the property is located will also have jurisdiction, at the choice of the claimant.

The order for payment procedure will begin with the creditor's request (either by means of a form or in writing) in which the following will be expressed:

1. the identity of the debtor, the domicile or domiciles of the creditor and the debtor or the place where they reside or where they can be found; and
2. the origin and amount of the debt, accompanied by the document or documents evidencing the existence of a monetary, due, payable and determined debt.

The filing of the initial petition for an order for payment proceeding does not require the services of an attorney and a lawyer.

Once the aforementioned petition for the initial order for payment procedure has been filed, the Counsel for the Administration of Justice will request the debtor to pay the petitioner within 20 days, accrediting it before the court, or to appear before the court and allege in a well-founded and reasoned manner, in a written statement of opposition, the reasons why, in his opinion, he does not owe, in whole or in part, the amount claimed. Otherwise, he will inform the judge so that he may decide on the admissibility of the initial petition.

If the debtor does not pay or does not appear giving reasons for the refusal to pay, execution will be ordered against him.

If the claim for the debt is based on a contract between a businessman or professional and a consumer or user, the Counsel for the Administration of Justice, prior to making the request, will inform the judge so that he can assess the possible abusive nature of any clause that constitutes the basis of the request or that has determined the amount payable.

The judge shall examine ex officio whether any of the clauses which constitute the basis of the petition or which would have determined the amount payable can be qualified as abusive. When he appreciates that some clause can be qualified as such, he will give a hearing for five days to the parties. After hearing the parties, it will decide what is appropriate by means of an order within the following five days. Neither the intervention of a lawyer nor of a solicitor will be required for this procedure.

If the abusive nature of any of the contractual clauses is considered, the order issued will determine the consequences of such consideration, agreeing either the inadmissibility of the claim or the continuation of the procedure without the application of those considered abusive.

If the court does not consider the existence of abusive clauses, it will so declare and the Counsel for the Administration of Justice will proceed to summon the debtor in the terms set forth above.

If the debtor does not comply with the request for payment or does not appear, the Counsel for the Administration of Justice will issue a decree terminating the payment order process and will notify the creditor so that he may request the order for execution, the mere request being sufficient, without the need for the period of twenty days to elapse.

From the time the order is issued, the debt will accrue interest for procedural delay, i.e., annual interest equal to the legal interest rate plus two points or that which corresponds by agreement of the parties or by special provision of Law 3/2004, of December 29, 2004, which establishes measures to combat late payment in commercial transactions.

If the debtor complies with the payment request, as soon as it is accredited, the Counsel for the Administration of Justice will agree to file the proceedings.

If the debtor files an opposition within 20 days, the matter will be definitively resolved in the corresponding trial, and the judgment will have the force of res judicata.

In this case, the notice of opposition must be signed by a lawyer and a solicitor when their intervention is necessary due to the amount involved, i.e. more than 2,000 euros.

When the amount of the claim does not exceed 6,000 euros, or when rent or amounts owed by the lessee of urban property are

claimed, the Counsel for the Administration of Justice will issue a decree terminating the payment order process and agreeing to continue the proceedings in accordance with the VERBAL TRIAL PROCEDURE, transferring the opposition to the plaintiff, who may challenge it in writing within 10 days.

The parties, in their respective writs of opposition and of contestation thereof, may request the holding of a hearing.

If the amount of the claim exceeds 6,000 euros, the creditor has 1 month to file a lawsuit in accordance with the rules of the ORDINARY JUDGMENT PROCEDURE from the date of service of the notice of opposition. If the claim is not filed within the time limit, the Counsel for the Administration of Justice will issue a decree dismissing the proceedings and ordering the creditor to pay the costs. If the claim is filed within 1 month, a decree will be issued terminating the order for payment proceeding and giving notice to the defendant so that he may answer the claim within 20 days.

EXCHANGE PROCEEDINGS:

The exchange lawsuit will only proceed if, when filing it, a bill of exchange, check or promissory note that meets the requirements set forth in the Exchange and Check Law is presented.

The Court of First Instance of the domicile of the defendant/s shall be competent for the exchange judgment.

The exchange trial will begin by means of a brief claim to which the exchange instrument will be attached.

The court will analyse, by means of an order, the formal correction of the exchange instrument and, if it finds it to be in conformity, it will adopt, without further proceedings, the following measures:

1. Require the debtor to pay within 10 days.
2. Order the immediate seizure of the debtor's assets for the amount stated in the enforceable title, plus another amount for late payment interest, expenses and costs, in case the payment request is not complied with.

If the debtor of the exchange complies with the order for payment, all costs incurred shall be borne by him, unless he justifies that, for reasons not attributable to him, he was unable to make the payment before the creditor issued the order for payment.

The debtor may raise the following defenses (numerus clausus) within the aforementioned 10-day period:

1. The personal relations existing with the creditor or those personal defenses that he has against the previous holders if when acquiring the bill of exchange the holder knowingly acted to the detriment of the debtor.

2. The non-existence or lack of validity of its own exchange declaration, including the falsity of the signature.

3. The lack of legitimacy of the holder or of the necessary formalities of the bill of exchange, in accordance with the provisions of this Law.

4. The extinction of the exchange credit whose performance is demanded from the defendant.

Once the debtor has filed a writ of opposition, the Counsel for the Administration of Justice shall transfer it to the creditor so that he may contest it in writing within 10 days.

The parties, in their respective opposition and challenge briefs, may request the holding of a hearing, following the procedures set forth in the VERBAL TRIAL PROCEDURE.

If the hearing is not requested or if the court does not consider it appropriate to hold it, the opposition will be resolved without further proceedings.

When a hearing is agreed upon, if the debtor does not appear, the court shall consider the debtor to have withdrawn the opposition. If the creditor does not appear, the court shall decide without hearing him on the opposition.

If the debtor does not file an opposition claim within the established term, the Court will order execution for the amounts

claimed and after that, the Counsel for the Administration of Justice will make a seizure if it has not been possible to do so.

Finally, the court will issue a judgment ruling on the opposition. The final judgment issued in the exchange trial will produce the effects of res judicata, with respect to the issues that could have been alleged and discussed therein, and the remaining issues may be raised in the corresponding trial.

VERBAL TRIAL PROCEEDINGS:

The verbal trial procedure is that which is held when the amount in dispute is less than 6,000 euros, among other cases.

As indicated above, this procedure may be initiated either by filing an application for a payment order, a lawsuit for an exchange judgment or when a claim for an amount of less than 6,000 euros has been filed directly. In the latter case, the claim must be signed by a lawyer and a solicitor when their intervention is necessary due to the amount involved, i.e., when the debt exceeds 2,000 euros.

If the MONITORING OR EXCHANGE PROCEEDINGS have been processed with opposition by the debtor, the plaintiff may challenge it in writing within 10 days. The parties may request a hearing in their respective writs of opposition and challenge thereto. If none of the parties requests a hearing and the court

does not consider it appropriate, it shall issue a judgment without further proceedings.

Once the claim has been admitted, the defendant shall be notified of it so that he may answer it in writing within 10 days. If the defendant does not appear within the term granted, he will be declared in default. In general, the declaration of default will not be considered as an admission of the facts of the lawsuit.

The defendant may, in the answer to the claim, raise a compensable credit. If the amount of such credit is greater than that which determines the oral proceedings, the court shall consider such allegation as not having been made at the hearing, warning the defendant, so that he may use his right before the court and through the corresponding procedures.

Once the claim and, if applicable, the counterclaim or the offsetting claim have been answered, or once the corresponding time limits have elapsed, the Counsel for the Administration of Justice, when a hearing is to be held, shall summon the parties for such purpose within the following five days.

Once the parties have appeared at the hearing, the court shall declare the hearing open and determine whether the dispute between them still exists.

If the parties have not reached an agreement or are unwilling to conclude it immediately, the parties shall proceed to clarify and establish the facts on which there is contradiction.

If there is no agreement on all of them, the evidence shall be proposed and the evidence that is admitted shall then be taken.

After the evidence has been heard at the hearing, the court may grant the parties a turn to speak in order to formulate oral conclusions. The hearing shall then be closed and the court shall render judgment.

ORDINARY TRIAL PROCEDURE:

As indicated above, this procedure can be initiated either by filing an application for a payment order, a lawsuit for an exchange judgment or when a claim for an amount of more than 6,000 euros has been filed directly. In this case the claim must always be signed by a lawyer and a solicitor.

Unlike the oral proceedings, once the claim and, if applicable, the counterclaim have been answered, the Counsel for the Administration of Justice will summon the parties to a hearing in which, first, the court will invite the parties to try to reach an agreement that will put an end to the proceedings.

If an agreement is not possible, each party shall make a statement on the documents submitted by the other party up to that time, stating whether it admits, contests or recognizes them or, if applicable, proposes proof as to their authenticity.

The parties shall then establish the facts on which there is agreement and disagreement of the litigants and propose the relevant and useful evidence that they wish to practice in writing.

Once the evidence has been admitted, the date of the trial will be set, and the purpose of the trial will be to hear the evidence admitted (testimonies, oral and contradictory reports of experts, judicial recognition, if applicable, and reproduction of words, images and sounds). Once the evidence has been taken, the parties shall orally formulate their conclusions on the disputed facts, stating in an orderly, clear and concise manner, whether, in their opinion, the relevant facts have been or should be considered admitted and, if applicable, proven or uncertain.

Resources:

Judgments, final orders and any others expressly indicated by law may be appealed, with the exception of judgments handed down in oral proceedings on account of the amount involved when such amount does not exceed 3,000 euros.

In filing the appeal, the appellant shall state:

1. The allegations or grounds on which the challenge is based, which implies that the appeal must be reasoned, with the party invoking the factual and legal reasons on which it is based.

2. The decision appealed (final judgment or order indicating, if applicable, the number and date, to which I add the date of notification to confirm that it was appealed within the deadline) and what is very important: the challenged pronouncements, a requirement that already gave rise to a rich casuistry that, although it was almost always referred to the preparation, nowadays must be considered to have been surpassed.

3. The proposition of evidence on appeal when deemed appropriate.

4. The request for a hearing if deemed necessary.

The Court that has to decide on the appeal, if new documents have been submitted or evidence has been proposed, will decide on their admission within 10 days. If evidence is to be taken, the Counsel for the Administration of Justice shall set a date for the hearing, which shall be held within the following month, in accordance with the provisions of the oral proceedings.

If no evidence has been proposed or if the entire proposal has been rejected, a hearing may also be convened by order, provided

that this has been requested by one of the parties or if the Court deems it necessary. In the event that a hearing is agreed upon, the Counsel for the Administration of Justice shall set a date and time for said act.

Against judgments handed down by the Provincial Courts in the second instance of any type of civil proceedings, the parties entitled to do so may choose to file an extraordinary appeal for procedural infringement or an appeal in cassation.

If the two appeals referred to in the preceding paragraph are prepared by the same party and against the same decision, the cassation appeal shall be deemed inadmissible.

NOVEMBER 2023

For more information:

@CONDE – ESCALZA CB LAW OFFICES

Rambla Catalunya 49-51 3º 2ª
Barcelona – Spain
Phone: +34 / 93 488 1690
Fax: +34 / 93 487 9162

Email: jmajem@conde-escalza.com
URL : www.conde-escalza.com

@PELAYO ABOGADOS

Paseo Pintor Rosales nº 20, 1º
28008 MADRID
Phone: + 34 / 91 547 71 84
Fax: +34 / 91 541 63 18

Email: rcpelayo@pelayo-abogados.com
URL : www.pelayo-abogados.com

Notes

About Spain