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Italy

LDC

Atradius Collections Italy can supply you with a selected and professional network of the most experienced law firms in Italy in the judicial credit collection activity. This network covers all the territory and is able to manage the legal actions in all Court districts.

More than mere legal assistance, AC Italy can also assist with direct collection activity. These are managed by a selected network of local agents, who visit the debtors all over the country in order to collect your money.

According to our experience, this solution is particularly successful for medium-low amounts, for specific debtor's categories (individual sole traders, shops, small companies) and for particular trade sectors (e.g. food, textile, clothes, and shoes). The local agents' network can also investigate locally in order to search an untraceable debtor.

Other actions

AC Italy can evaluate the solvability of a debtor and the financial situation of the companies. To investigate in a more accurate way, we can add some extra services for our clients such as bank account research, officially booked goods research such as vehicles, crafts, estates research and estimation in the public registers. All these elements can help to create a clear picture of the debtor's situation and will assist in finding the best way to collect your money.

Interests

We always recharge debtor with the calculation of interest for 8% on daily basis (see European Directive 2000/35/CEE). The interest is always requested, both in an amicable and in a judicial phase. Under a cultural point of view, unfortunately, it is rather difficult to get the full amount of interests from a debtor. It is absolutely not part of the mentality of Italian debtors, also because most part of the Italian companies that collect the money by themselves have never recharged a debtor with interests. Often they tolerate some delays in the payment of the invoices (see particular sectors, such as clothes, shoes, and food). Interests are often considered a matter of negotiation between debtors and collectors.

Legal phase

The Italian juridical system is a typical example of a civil law system. For credit collections we refer to the Italian Civil Code (Codice Civile) which contains and implements also all the rules about commercial law and Civil Action Code (Codice di procedura Civile) which disciplines the civil trial in Italy.

Furthermore, the corpus of the laws concerning the insolvency procedures is relevant. The judicial organisation foresees several kinds of judges, according to the amounts of credit (Justice of the Peace, One- Judge-Tribunal, Tribunal). Traditionally, any legal action starts on the Court district of the debtor.

The ordinary Civil Action is rarely used to collect a credit founded on a written document, such as an invoice. The proceeding is very long and can last for some years, it is also expensive due to the fees of the lawyer that is engaged in several hearings and different

activities such as witness examinations, evidence analyses, etc..

The main purpose of the ordinary Civil Action is to determine the existence of the credit that is due and the relations between parties. In case the due credit is based on documents, the law allows us to use a faster and cheaper procedure: the summary judgement (decreto ingiuntivo). This requires only limited intervention from a judge, except when the debtor opposes to the petition. These are the most common steps to collect credit in Court.

Legal actions (type and costs)

First, the lawyer sends a reminder to the debtor, a registered letter, so there is proof of delivery. Within eight to ten days from the receipt of the reminder, the debtor must pay. If he does not pay or he does not reply (e.g. disputing the debt) the judicial phase is started with the decreto ingiuntivo.

Documents needed:

- Copy of unpaid invoices
- Copy of transport documents signed by debtor
- Abstract from Accountancy Book certified by a public notary (if we do not have these documents) secondly the lawyer writes the Petition of Injunction decree, which has to be signed by creditor on the right side, in the bottom, as power of attorney document. Furthermore, the petition has to be filed in Chancery with all enclosed documents as evidence. The judge examines the question and if he agrees to its correctness, he issues an Injunction decree. This process may take up to four or five months.

The original documents are taken into the Chancery and an authorised copy to notify the debtor. For this reason is it of utmost importance to know the exact address of the debtor. The lawyer must deliver the decree within 60 days from the issue of decree. When the debtor receives the decree, he has 40 days to oppose it. If the debtor files for opposition, the civil trial starts. It is a very long process, regarding all the phases required by the Italian Code in order that the Judge can issue the judgement..

When there is no opposition raised, the decree becomes executive and the creditor can claim for the attachment of goods of the debtor. The executive seal is added to the decree and the Chancery will issue a Writ of execution (precetto). Both documents have to be notified to the debtor.

Within 90 days the creditor has to start forced execution, in Italian language "pignoramento". If the debtor does not pay or does not make opposition within five days from receiving the decree, the lawyer brings in the executive Injunction decree, the order of injunction to pay and proof of notifies to a bailiff.

If the creditor possesses cheques or promissory notes, which are unpaid nor rejected, he can start directly with the Writ of Execution, because these notes are executive titles.

If a debtor makes an opposition to the Injunction decree or to the 'writ of execution', the summary judgement is suspended and an ordinary civil action takes place.

The creditor has to answer to the opposition with a proper statement of defence (comparsa di costituzione e risposta.)

During the first hearing, the judge will evaluate the statements of both parties and the documents. He can decide to declare the temporary execution of the injunction opposed (provvisoria esecuzione). In this case, the summary judgement process will start again with the next steps (writ of execution, attachment, etc.) while the civil action takes place in parallel.

When the creditor gets the temporary execution from the judge, he has almost won the legal action already, and the ordinary civil action will end shortly thereafter. The cost of each legal action strictly depends on the amount of the credit, following a very complex system of tariffs with many ranges and different actions.

Power of attorney

A generic power of attorney cannot be used for all kinds of legal actions in Italy. It means that for each action the petition has to be signed by the legal representative of the creditor. The proxy must be in Italian. AC Italy can provide translations, but the original document with the signature must be always the Italian version.

Execution of a judgement

AC Italy can proceed with the attachment of ordinary goods, such as estates and properties, if it is known where they are. The attachment of estates is a really expensive measure and it can take several years before this process is ended. This procedure is solely used for high amounts, above 100 000 EUR. Is it also possible to attach the salary or a retirement pension of a debtor for 16 % each month until the payment of the credit, involving the National Retirement Institute or the employer.

Collection costs (Charged to debtor)

A debtor is always charged with the costs paid for the legal action. In particular cases, the creditor has to pay a small amount. It is common that the payments of the legal costs are matter of agreement to stop the legal procedure with the immediate payment of principal and interests. In general, AC Italy collects on customers' invoices only in the amicable phase.

Due to contract laws, the collection convention is signed between AC and the creditors, so another person cannot be linked to the tariff. The law generically allows us to request it but without specifying the amount, it mentions the criteria of transparency and proportionality and the legal tariff of lawyers, it is not valid anymore.

There are strong cultural roadblocks against paying for the collection costs, and they are stronger than the dislike of interest for late-payment. We cannot claim the amicable costs in Court, there is no jurisprudence in it.

Insolvency procedures

The most diffused insolvency procedures in Italy are: bankruptcy (fallimento) and judicial composition with creditors (concordato preventivo)

Bankruptcy

In Italy, not all debtors can be declared bankrupt. According to Italian law, small debtors like individual shops and the small-scale farmers cannot be declared bankrupt.

This counts also for small firms in which the owner is also the manager and in which the personal work weighs heavier than the value of the goods involved. Furthermore you can ask for bankruptcy of a debtor if your credit is above 30.000 EUR and the debtor has a turnover of min. 200.000 EUR. The last requisite is that the debtor should not have been cancelled from the Chamber of Commerce for more than 1 year.

The procedure takes a long time, some years. The judge and the insolvency practitioner schedule a hearing to receive all the claim petitions for lodging. After this hearing, the petitions are laid and you have to wait for a long time for their acceptance, which makes the costs higher. Finally, the debt situation is fixed with a judge's sentence and the very long procedure of the liquidation of the bankrupt's assets can take place.

Composition with creditors

Just to avoid bankruptcy, the debtor can ask directly to the Court to be admitted to this insolvency procedure. The debtor's petition must include how much they can pay to the creditors in percentage. This offer has to be approved by the majority of the creditors (considering the amount of each credit) and should then be validated by the court. After that, the insolvency practitioner starts to liquidate the asset referring to the payment plan.

Type of companies

In Italy, there are two main types:

Person companies, unlimited: SS, SNC or SAS

In a SS or SNC, the partners are unlimited responsible, for a SAS only the declared unlimited partner.

Capital companies, which are limited: SRL, SPA, SAPA

In this group the partners cannot be linked to the company's situation

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