

Spain

LDC

Once we have carried out all the amicable recovery actions and we have to conclude that an amicable recovery is not possible, we analyse if it is possible to file a case and if so we send the file to an LDC. Currently we are using CyC external lawyers and attorneys. We value if it is financially wise to pursue a case, it depends on the amount of debt in relation with amount of possible costs and time involved. We also value the debtor's solvency and activity. If a debtor is not trading nor has any assets it makes no sense to consider legal action.

Before sending the file to a LDC, we need the client to provide the following "original documents":

- Power of attorney signed before Public Notary and sealed with Hague Apostille (Hague Apostille is needed if the power is signed out of Spain).
- Original invoices
- Original contract, if any.
- Original orders
- Original delivery notes
- Current statement of account
- Correspondence between parties
- Original promissory notes, cheques or bills of exchanging, if any
- Any other document which could help to prove the debt.

Other actions

Interest

In Spain now we are claiming the interest in the amicable phase of debt collection but to get it out of the legal phase is very difficult. Anyway they are only included in legal debt collection proceedings.

Legal actions (type and costs):

Once we have decided to start legal proceedings, we chose the kind of legal procedure that would be best to claim the debt. The choice is between:

Monitorio - A legal procedure for undisputed debts under 250000 EUR. If we believe, because of the amicable actions, that the debtor will possibly oppose to the legal claim we would not recommend this type of legal action.

Proceeding: We file the claim, the court summons the debtor and if there is neither opposition nor payment, the court pronounces a favourable judgment. If the debts are paid, the procedure finishes, when the debtor raises opposition, we have to file a verbal proceeding (for debts under 3000 EUR) or ordinary proceeding (for debts from 3.000 EUR and above).

Verbal Proceeding - Legal procedure for debts under 3000 EUR.

Proceeding: We file the claim; the court summons the debtor and fixes a day for the verbal proceeding. In the court hearing the creditor shows ratification of the claim and the debtor files opposition. The creditor and the debtor propose and practice the proof they have and after some time the Court will announce the judgement.

Ordinary Proceeding - Legal procedure for debts from 3000 EUR and above.

Proceeding: we file the claim, the Court summons the debtor and asks to file for opposition or not. Once the debtor has filed for opposition, or if the period to do so has expired, the court fixes the date for the Previous Audience.

In Previous Audience the creditor and the debtor show ratification about their claim and opposition and propose the

proof they want to use. The Previous Audience finishes and the court fixes another date for practising the proofs and to issue final report (Verbal Proceeding). After a period of time the court will hand down the judgment.

Cambiaro - Legal procedure for any debt which is guaranteed with Promissory Note; cheque or Bill of Exchanging.

Proceeding: we file the legal claim; the court summons the debtor and orders the preventive attachment of the debtor's assets; if the debtor opposes, the Court sets a date for the oral proceeding (same action as in Verbal proceeding). After some period, the court will publish the judgement. If no opposition, the Court give the judgment and the attachment of assets goes on.

It is the best legal proceeding when we have Promissory Notes, Cheques or Exchanging Bills, as the reasons for opposition are established in law so that the debtor cannot base his opposition in any way that is not foreseen in law.

About the costs, it depends on every kind of legal procedure and the amount of debt, so that we only can give the approximate amount of debt in the specific case once we have analysed the kind of legal procedure and we know the amount of debt.

Collection costs

Power of Attorney

Once the decision is made to start legal proceedings, we prepare a draft of Power of Attorney that the client has to sign before a Public Notary and which is sealed with the Hague Apostille. Public Notary and Hague Apostille are necessary for foreign powers if we want them to be used in Spain.

If the Power of Attorney has not been signed before Public Notary or has not been sealed with the Hague Apostille, they will not be accepted by Spanish Courts. We need a specific power for every legal proceeding as every power the lawyers and attorneys that are empowered are different (it depends on the city where the claim will be filed).

Execution of the judgement

If a debtor does not pay voluntarily after received the judgement from the court, whether it is been issued in a Monitorio; Verbal; Ordinario; Cambiaro, proceeding, we have to file for a new legal procedure: Execution Proceeding. This kind of procedure is needed for attaching the debtor's assets.

The costs and time involved depend on the debtor's assets, if a debtor has a lot of assets and we have to order a lot of attachments, it will be more expensive than if debtor has not got any assets.

Expected Time Frame:

Monitorio: 8-12 months

Verbal: 1 year minimum

Ordinary: 18 months

Cambiaro: 8-12 months

Execution: 18 months minimum (if debtor has properties without previous attachments).

Statute of Limitation

Accordingly with Spanish Law there are two periods for prescription:

- General period: 15 years (this period is applied for example to debts generated by due invoices).
- Special period of prescription for obligations that must be paid yearly or in shorter periods of time: 5 years. Insolvency procedures.

When we are informed that the debtor has applied for insolvency and once we know the insolvency procedure data, we prepare the draft of the writ that the client must complete, sign and send to court. We send this writ by mail to the client with the instructions he must follow to lodge the credit. We can't lodge credits on behalf of our clients as a specific power is required in Spain to act on behalf of other person or company and in Insolvency Procedures there's no time for obtaining this power.

Types of companies

The common types of companies in Spain are SL (limited society) and SA (business corporation). The minimum corporate capital for setting up a SL is 3000 EUR; and for setting up a SA is 60000 EUR.

In SA and SL, shareholders' assets are not affected by company's debts.

There is also a type called Communities, this type of company is quite different of a SL and SA. In Communities co-owners' assets are affected by company's debt but only in a subsidiary way (if company hasn't enough assets to pay all its debts).