

France

Amicable phase

The recovery process always begins with a written reminder because of a legal tendency regarding the activity of recovering debts for third parties so that the debtor knows who the creditor is and who the collection agency is. Our collectors then start collection efforts in order to identify the origin of the debt and to find a solution with the debtor to pay the whole debt.

Sometimes, AC France decides to entrust the file to a local agent, who visits the debtor in order to put a strong pressure on him to obtain the settlement of the debt or to provide the necessary information about his solvency. The local agent's network can also investigate in place in order to search an untraceable debtor. In case of an unsuccessful search, we could also ask a specific agency to find the new address of the debtor.

Dispute

In many cases, the debtor tries to avoid payment stating that there is a technical dispute or a commercial one. AC is very pragmatic in the way of handling that kind of files. First, we try to clarify the problem by asking evidences to the debtor, by asking comments to the customer and once we have all the elements of the dispute, we try to (solve it if it is possible) find an amicable solution.

If we consider that the dispute is unfounded, the collection process continues. If it is a partial founded dispute, we ask the debtor to pay the undisputed part of the debt in order to make a goodwill gesture and we try to find an agreement for the balance provided that the customer is ready to accept a deal. When no deal is possible, we will usually decide to start a legal procedure.

LDC

AC France has selected the most experienced law firms and attorneys in the judicial credit collection field to work with. This vast network covers all the territory and can manage the legal procedures in all Courts districts.

Other actions

AC France will evaluate the solvency of a debtor and his capacity to pay a debt. Some extra services can be provided by specific firms, such as bank account research, real estates research and officially booked goods research. These elements can help to create a clear view of the financial situation of the debtor and to assists in finding the most efficient way to collect the money.

Interests

We always charge the debtor with the calculation of interests for the legal interest rate.

This rate is different each year and defined by the government, multiplied by 3.5 in accordance with the French law on the terms of payment. AC France adds a fixed cost of 40€ per case in accordance with the European directive and a penalty clause of 10% for the recovery's costs.

Legal phase

The main goals of a legal action are to determine the existence and the amount of the debt, to define the relationships

between the creditor and the debtor and to finally decide if the outstanding amount is due and if the debtor must pay it immediately or with a payment plan. We always need to obtain a judgement before acting by enforcement.

Legal actions (type and costs) - There are the 3 ways to obtain a judicial decision:

Injonction de Payer

It allows AC France to obtain an injunction against the debtor without the presence of the debtor in the Court. The judge decides to condemn the debtor after analysing the documents that are produced (invoices, purchase orders, delivery notes, unpaid cheque, etc.). After this, the injunction is notified to the debtor by a bailiff.

The debtor has a month from the notification of the decision by a bailiff to accept this decision or to dispute it. If he decides to accept it, then he has to pay. If he decides to dispute it, then the judge planned a hearing to analyse the reasons why the debtor refuses to pay. In this case, the debtor and AC France need to be represented in the Court.

This type of procedure is used when the amount of the debt is not too high and when the debt is not disputed. Otherwise, the judge prefers to have the creditor and the debtor in front of him to sort things out. It is a very simple and quick procedure where AC does not need to entrust a lawyer, except when the debtor disputes after the bailiff notification. It is an inexpensive procedure.

Refere provision

This is an emergency procedure where the creditor has to deliver convocation to the debtor for a hearing in front of the judge. The debt should not be disputed the paper file complete with the evidence of the debt and the creditor has to argue about the emergency, often because the recovery is compromised because of the risk of insolvency. In many cases, the debtor is not present and the judge pronounces a judgement during the first hearing.

If the debtor is present and if he disputes, then the judge decides to close the case and ask the creditor to start the common procedure called 'assignation au fond'. It is also a very fast procedure but we need to entrust a lawyer to represent the creditor in the Court.

Assignation au fond

It is the common procedure to obtain a judgement when the creditor and the debtor do not want to find an amicable solution. Both should be represented by a lawyer and it is often a very long procedure with a lot of hearings. It is also an expensive procedure in which an expert might be necessary especially in case of a technical litigation.

Power of attorney

AC France needs to have a specific power of attorney for each case where a legal action has to be started. The proxy must be in French, signed by the legal representative of the creditor and must mention the name of the debtor.

Execution of judgement

After the judgement is notified to the debtor, the latter has one month to appeal. After this period, the judgement becomes 'executive', which means that the bailiff can start a forced execution. In France, only bailiffs have the authority to handle the enforcement of a judicial decision.

At this stage, the debtor has no choice. He either has to pay or go bankrupt.

Collection costs

There are two kinds of recovery costs.

First the rechargeable costs the debtor has to pay, which are often liquidated by the judge. In most cases, costs derived from the judicial procedure and the notification's costs.

Second those costs that could not be recharged to the debtor, essentially the lawyers' fees. Each party has to bear its own lawyer fees, but the winning party could ask the judge to obtain an indemnity to compensate its expenses. In practice, the amount approved by the Court constitutes only a minor share of the expenses. This indemnity is charged to the debtor.

Expected time frame

A non-complex commercial case will take approximately eight to ten months to be solved. This period can be doubled in case of complex commercial or technical dispute or in case of appeal.

This estimation can be slightly increased for some jurisdictions where the judicial system has been rated below the average performance of the country.

Miscellaneous information / insolvency procedures

The legal definition of the insolvency is that the debtor is not able to face up his due debts considering his available assets.

The two main procedures are:

- Receivership, which allows saving the debtor's activity thanks to a continuation plan, wherein creditors can expect dividends.
- Bankruptcy which means the liquidation of the assets when the situation is totally compromised and creditors can not expect dividends. The delay to lodge the claim is 2 months for French creditors and 4 months for foreign ones from the date of publication in BODACC (official journal).

The duration could be important as it is mandatory to check the debt of all the creditors who lodged the claim, before making proposition of plan of payment (in general in 10 years by annual payment).

It could also happen that the debt is disputed and a convocation from the Court is planned to justify the debt.

Another point is that a receivership can be converted in bankruptcy. Indeed, almost 90% of the receivership ended by a bankruptcy