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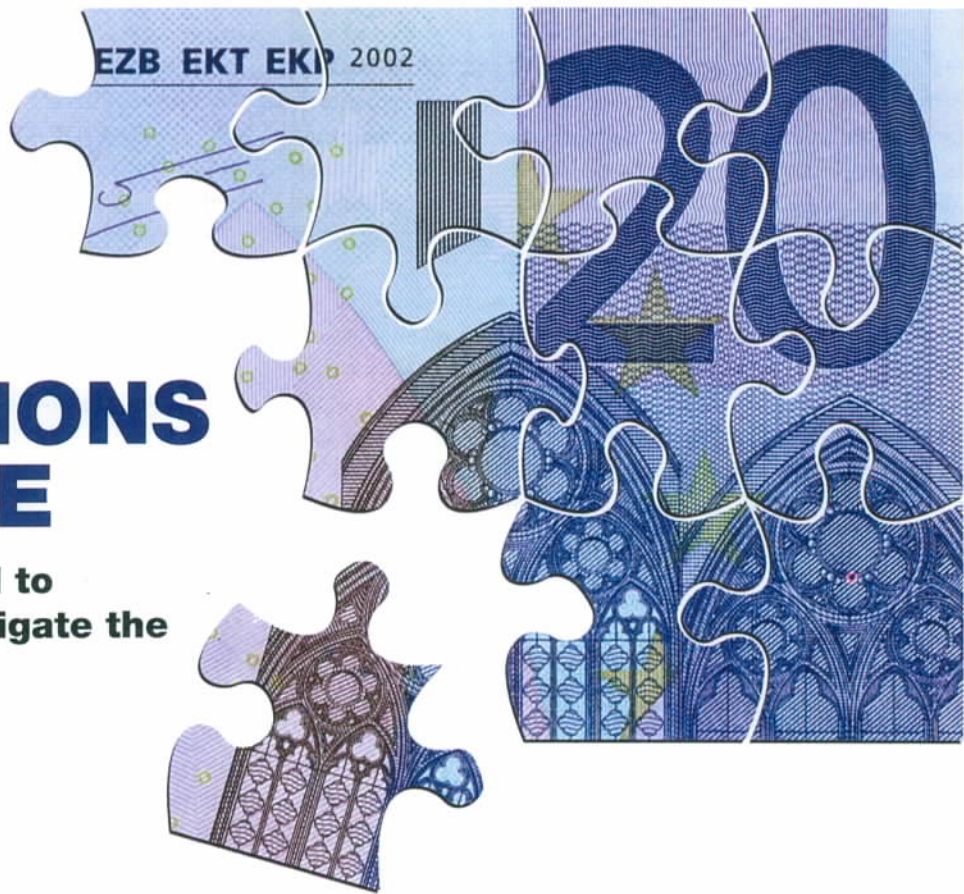
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DEBT COLLECTIONS IN FRANCE

Find out what you need to know to effectively navigate the French legal system.

By Paul de Drée, Esq.



Most of you (perhaps all of you) know that the French legal system is a civil law system, as opposed to the common law system found in particular in the United Kingdom and the U.S.

One of the salient differences between these two systems is that in civil law countries, statutory law is of paramount importance: It is indeed the principal source of law. Many French statutes have thus been codified in various codes, the most famous being the Civil Code, enacted in 1804 and amended over the years. Statutes are applicable throughout French territory as France is not a federal state.

Case law, although it is not the first source of law, is nevertheless of importance. French courts are not bound by the rule of judicial precedents, as in common law countries, but decisions, in particular those of the Supreme Court ("Cour de Cassation"), carry strong authority, as the "Cour de Cassation" decides only questions of law and not questions of fact.

Around the world, debt collections in a foreign jurisdiction raise, in particular, the following key issues: Who are the collection professionals? What information can be obtained on the debtor? If the creditor has to commence legal proceedings against his debtor, how does the litigation system operate? What are the costs entailed? And when a money judgment is obtained, how may it be enforced against the debtor?

1—Collection Professionals

Debt collections in France are basically handled by collection agencies, attorneys at law and bailiffs ("huissiers de justice").

1.1. Collection Agencies

Collection agencies are, for the most part, organized within a union, i.e. the "Syndicat National des Cabinets de Recouvrement de Créances et de Renseignements Commerciaux" (A.N.C.R.). It is worth noting that this body has published ethical rules.

The activities of collection agencies are regulated by various statutes and in particular by a December 18, 1996 decree.

This decree provides, inter alia, that collection agencies must (i) take out professional liability insurance, (ii) open a trust account for their clients' funds and (iii) before engaging in any collection activities, supply the public prosecutor with a written declaration stating that these requirements are met. The infringement of these rules may result in criminal sanctions.

In addition, collection agencies, in their capacity as agents, must enter into a written contract with their clients covering certain defined points (e.g. computation of the remuneration, payment to the client of the funds collected, professional liability insurance, etc.).

It is worth noting that, according to legal provisions, amicable collection costs are basically to be borne by the creditor, and cannot be charged to the debtor.

1.2. Attorneys At Law

Attorneys at law ("avocats") admitted to practice in France must be registered with one of the French bar associations. They are authorized to render legal advice and to present writ-

ten and oral arguments before all courts of first instance and courts of appeal throughout France (although some peculiarities exist regarding appearances before the “Tribunal de Grande Instance” and the courts of appeal).

Therefore, an attorney based in Paris may, for example, represent a foreign creditor wishing to collect a debt against a debtor located in Marseilles.

Attorneys are not entitled to work solely on the basis of a contingency fee (i.e. a part of the remuneration must not be contingent on the outcome of the proceedings). Usually attorneys at law work on an hourly rate basis, but we also see other fee arrangements (fixed fee, blended rate, capped fee, suit fee, etc.), which can be applied on top of a contingency fee.

Each attorney at law is insured for malpractice under a group policy subscribed by its bar for conversion of funds and for malpractice. On top of that, it is sound and current practice for a business law firm to take out additional insurance.

1.3. Bailiffs

Bailiffs (“huissiers de justice”) benefit from a legal monopoly for conducting enforcement proceedings and interim measures (e.g. provisional attachments of bank accounts).

They are also entitled to engage in collection activities. Furthermore, they are allowed to obtain, under certain conditions, information regarding bank accounts.

2—Preliminary Investigation On The Debtor

Before starting litigation, it is advisable to conduct basic research on the French debtor. It is indeed important to know exactly the status of the debtor (is it a corporate body? an individual? a sole proprietorship? etc.), as a judgment rendered, for example, against a sole proprietor, where the debtor is in fact a corporate body, would be unenforceable.

In this respect, when the debtor is a company or a sole proprietorship, some basic information can be rapidly obtained from the various trade registries in France (e.g. main particulars regarding the debtor: this is the so-called “Kbis extract,” opening or not of a bankruptcy procedure, last financial statements, pledges and liens registered against the debtor, etc.). French databases also exist that can supply such information.

It is worth noting that there is no national land registry in France, hence the difficulty of gathering information on whether the debtor owns immovable assets.

Additional information can also be obtained from other registries (e.g. the Register of Associations and Foundations, National Institute of Industrial Property Register, Register of Pledges over Movables, etc.) and private investigators.

When reaching the enforcement stage of a money judgment, information can be also obtained from the public prosecutor and bailiffs.

3—Litigation System

3.1. Courts

The French court system is divided into two main categories: administrative courts and judicial courts. Conflicts of jurisdiction between these two sets of courts are decided by a special court, i.e., the “Tribunal des Conflits.”

Administrative courts hear cases involving the administrative and operating agencies of the executive branch of the government, certain tax cases and appeals against administrative decisions.

Judicial courts are divided into civil courts (in a broad sense) and criminal courts.

The civil courts system is a two-tier system with no jury: (i) the courts of first instance (i.e. the “Tribunal de Grande Instance” and the “Tribunal d’Instance” and special tribunals for tradesmen, labor, social security and rural matters) and (ii) the courts of appeal which have jurisdiction over appeals from courts of first instance.

The highest echelon is the Supreme Court (“Cour de Cassation”), which is mainly limited to reviewing questions of law. In the context of commercial collections, the civil court system (and more specifically the commercial courts) is of relevance. Commercial courts are composed of commercial businessmen elected by their peers.

Criminal courts are not generally relevant in the context of commercial collections.

3.2. Procedural Outline

Actions initiated by a creditor in a French court start with a writ of summons (“assignation”) served upon the defendant by a bailiff. Foreign creditors must elect address for service in France when initiating an action before a commercial court.

After registration of the writ of summons with the clerk of the court, it takes several months before the case is adjudicated by the court. During this period, the parties will exchange their written submissions and evidence and finally present their oral arguments at the trial hearing. The court sets the various dates at which the parties will have to present their written submissions and oral arguments and produce evidence.

In France, there are no discovery proceedings similar to those found in the common law system. Parties are not compelled to produce all documents in their possession, as discovery is voluntary. However, the court, upon motion of one party, may enjoin the other party to produce particular documentary evidence.

It is worth noting that all documents in a foreign language produced before a French court must be translated into French by a sworn translator. As far as documents are concerned, it is also important for a creditor to bear in mind that effective and timely collection is contingent upon the creditor supplying his attorney with a short summary of the “history” of the debt and all pertinent documents, correspondence, contracts, checks, invoices, etc.

When copies of invoices are submitted to the court, they must

bear the following handwritten words: "certifiée conforme à l'original" (true and certified copy), along with the signature and the seal (if one exists) of the creditor.

With the above background in mind, it is also necessary to stress that summary proceedings ("référé") exist in France and are useful when a debt cannot be seriously disputed. In such cases, an order from the court (in fact, from the judge presiding the court) may be obtained within a few days. Such proceedings are adversarial proceedings.

In addition, an injunction to pay ("injonction de payer") may be obtained from the judge further to the submission by the creditor of an ex-parte application. If the debtor objects to such injunction to pay, then the case is tried on the merits as a standard procedure described above.

Security deposits are not required from the plaintiff for instituting an action. However, the court may request a security deposit when the court orders enforcement of the judgment notwithstanding an appeal (this is the so-called "exécution provisoire" or interim enforcement of the decision).

Court costs for bringing an action are rather low. However, foreign creditors must be aware that they will basically have to bear most of the fees of their attorneys when litigating in France, as courts are quite reluctant to award costs of any substance to the winning party.

The general statute of limitations of actions for commercial debts is five years, unless a shorter period is prescribed by law.

It is also worth noting that in France, there are provisional remedies which, under certain conditions, can be obtained in an ex-parte procedure (i.e. attachments, provisional judicial mortgages or pledges). Resorting to such provisional remedies can be useful for foreign creditors wishing to secure their claim.

4—Enforcement Of Judgments

4.1. Enforcement Of French Judgments

A judgment delivered by a French court is not immediately enforceable. First, it must be served upon the defendant by a bailiff. Thereafter, the judgment can only be enforced either if it is no longer appealable or, even if an appeal has been lodged against it, in the case of interim enforcement of the decision (see 3.2. above).

A judgment rendered in the context of summary proceedings may always be enforced, even if an appeal is lodged.

The enforcement of judgments rests with bailiffs, who may be assisted in some cases by public authorities. Basically, the bailiff may seize or garnish all the assets of the debtor, whether movable or immovable, although certain assets (e.g. wages) are not fully seizable.

4.2. Recognition And Enforcement Of Foreign Judgments

A foreign judgment cannot be enforced in France without some formalities being satisfied.

In this respect, enforcement is based either on treaties, if any,

or on the rules of the French Civil Code and the Code of Civil Procedure.

There are some treaties and regulations on enforcement of foreign judgments, the most important being the European Council Regulation of December 22, 2000 on civil and commercial decisions, in force between the European Union member states.

Basically, this regulation sets out a simplified recognition and enforcement procedure, whereby enforcement in France of a judgment rendered by another member state is obtained by presenting an ex-parte application to the clerk of the French civil court. Recourses may be lodged against the decision of the clerk of the court granting or rejecting the request for recognition, either before the court of appeal or before the presiding judge of the civil court.

Traditionally, grounds for such recourse are the compliance or not of the foreign judgment with French international public policy rules and/or the existence or not of another judgment that is irreconcilable with the foreign judgment.

In the absence of a treaty, foreign judgments are usually enforceable by virtue of an order ("exequatur") of the civil court ("Tribunal de Grande Instance"), obtained in the context of adversarial proceedings.

In order to deliver an exequatur order, the French judge reviews (i) whether the foreign court had jurisdiction, (ii) the compliance of the foreign judgment with French international public policy rules and due process of law, (iii) and the absence of fraud ("fraude à la loi"). ●



Paul de Drée, an attorney-at-law ("avocat") registered with the Paris bar, has more than 25 years of business law experience, including 13 years as a partner of a major international law firm.

On January 1, 2012, de Drée opened his law office, de DRÉE Avocats, to serve, in particular, international clients. The firm practices general business and civil law, with a particular emphasis on debt collections and enforcement proceedings, creditors' rights, litigation and bankruptcy/restructuring. On projects involving more than just France, the firm works with trusted foreign firms or correspondents to provide a comprehensive service.

The core values guiding de DRÉE Avocats are a passion for clear business solutions to legal issues and constant attention to reliability and reactivity.

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