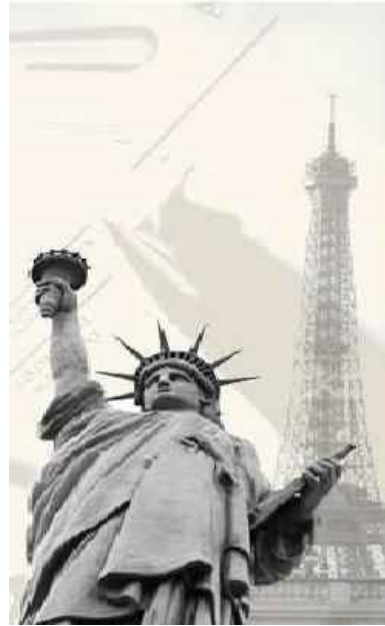


## DEBT RECOVERY IN FRANCE

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Whether your debtor is a French citizen, a French foreign resident or even a U.S. citizen residing in France (take my case, for example, an American expatriate with real property and income in France), it often makes more sense to pursue the outstanding debt in France. This of course will also depend on the nature of the debt, and in particular whether a jurisdiction clause in a contract provides for the exclusive jurisdiction of a U.S. court or otherwise.

Unfortunate multiplication of collection costs may arise when a U.S. collector pursues his claim against a French party in a U.S. court. Most often, unless the French party has an ongoing business or assets in France or is concerned about his U.S. credit rating, he will fail to appear and have a default judgment issued against him. Such a final judgment on the merits may serve little use, or will require additional time and costs for hiring of French counsel and obtaining sworn translations of the U.S. judgment to obtain recognition of the U.S. judgment (*exequatur*) before a French court. While French *exequatur* proceedings generally do not involve a review of the merits of the claim, the French court must nonetheless establish its own jurisdiction over the matter and independently establish that the U.S. court had territorial jurisdiction (and service of process) over the French person. An archaic remnant of chauvinism in French law provides that

unless a French citizen expressly waives his privilege to French jurisdiction, he may not be subject to suit in any other jurisdiction (hence precluding enforcement of the foreign judgment in France).

Hence, it is often a much better solution to pursue the claim directly in France. This is even the case where the underlying claim has no relationship to France. Even, for example, for order and delivery of products taking place exclusively in the United States, the counterpart of the above-mentioned *archiac* privilege of French jurisdiction provides that a French citizen is always amenable to French jurisdiction and has no claim of lack jurisdiction before a French court.

Once the decision has been made to pursue the claim in France, the question arises as to who you, the creditor or the collection agency, should contact. If the entity pursuing the claim is an intermediary, such as a U.S. collection agency or attorney, you should verify that your mandate gives you sufficient authority to pursue the claim in France, either via hiring of a French collection agency or the hiring of a French attorney (*avocat*).

The hiring of an attorney is a more aggressive and expedient solution, the former being inefficient for individual claims. Indeed, the regulation of the collection agency "profession" in France provides only for direct

mailings, strictly prohibits any threats of litigation, and in most cases requires the hiring of an attorney or process server before any further action can be taken.

In a country that is traditionally less litigious in nature than the U.S., a letter from an *avocat* notifying a French debtor of a claim has considerable weight. Such a letter, sent by registered mail, is deemed to constitute legal notification of the claim (*mise en demeure*), and no further delivery is required before commencement of suit. The contents of this letter are subject to regulation, and invite the debtor to appoint counsel and to contact the creditor's lawyer.

In my experience, French commercial debtors with claims against them in France are likely to be alerted by the *mise en demeure* and will quickly contact the creditor's lawyer to seek a settlement or write a letter to dispute the claim.

The French have a tradition of soft negotiation, as opposed to the aggressive and coercive litigation tactics in the U.S. Once a claim is the subject of discussion between two lawyers, usually both parties attempt to negotiate a settlement in good faith. However, if the debtor is unwilling to offer a reasonable settlement, litigation is often expedient and at the cost of the losing party (at the court's discretion).

The French attorney has a number of litigation tools at his disposal. If the claim is not subject to serious dispute

and is a matter of urgency, he may file a unilateral action for an injunction to pay before the summary court judge, who may enjoin the debtor to make provisional payment, subject to accrual of interest and penalties for late payment. Furthermore, summary procedures allow for seizures of assets and garnishment of wages.

Once a final judgment is obtained against a debtor, the collections process is greatly facilitated by the broad powers of the French *huissier*, or bailiff, who has broad police powers to garnish bank accounts and seize assets without any right of objection. The separation of the collection process between the merits and enforcement in two separate professions is extremely efficient in France.

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