

As a foreign national living in Spain, what's the best way to go about demanding payment of dues?

What to do when someone doesn't want to pay their dues...

By Armin Gutschick

So what happens if you can't get your clients to pay their bills despite repeatedly sending them invoices and reminders? Or what if one day the shoe is on the other foot and you're the client who has lost out when the workman you hired refuses to return your advance payment or carry out the job in hand – at least to your satisfaction? You may well be asking yourself this question: as a foreign citizen, do I stand any chance at all of defending my rights and getting my money back? Indeed you do. Read the article below to find out what steps you will need to take.

In Spain, having access to someone with in-depth knowledge of Spanish law and business practices, who is willing to help you, can make all the difference when it comes to demanding payment. The fact that many people are totally unaware of the related legal or out-of-court costs is another major obstacle to success. You should always attempt to settle these matters out of court because legal processes in Spain are often complex, expensive affairs that can drag on for many months, or even years. This explains why almost ninety percent of all cases are settled out of court with a mere ten percent opting to involve a court of law.

The first step should take place out of court when the foreign creditor informs the debtor that he or she is in arrears. The relevant requirements and legal consequences are detailed in articles 1100 and 1108 of the "Código Civil", the Spanish civil code. The debtor is sent a letter by registered post (or "office fax", a specific type of registered post) asking him or her to pay the amount owed within a given period of time. Once that period has elapsed with no payment having been made, the debtor is deemed to be in arrears.

In Spain, once the debtor is in arrears, the amount due to the creditor increases in line with the current official interest rate. This is defined annually in the government's household budget and was set at four percent for 2006. The interest rate was raised on 1st January 2007 and is now five percent. The creditor can only demand a higher interest rate if this was agreed beforehand in a separate contract. However, you should bear in mind that Spanish courts tend only to award interest once a case has officially been filed with them, regardless of whether or not there is an existing agreement between the parties involved.

If you do have to resort to a court of law, the new Spanish lawsuit system requires that judicial dunning procedures be implemented before the case enters a court of law. Debts of up to 30.000 euros can be demanded using these simpler dunning procedures.

a) Dunning procedures ("Procedimiento Monitorio")

Judicial dunning procedures can only be instigated to demand payment due and the total must be detailed in full on the procedure request. The request must be presented to the court of law under whose jurisdiction the debtor falls. A contract signed by the debtor, invoices, delivery notes or other certificates proving the existence of monies owed must be provided. However, bear in mind that it is not possible to approach registration offices to request addresses in Spain and they are prohibited by law from providing such information. However, the website www.paginasblancas.com is a good source of reliable address information. In addition, anyone can go online to request trade register and land register data without having to give a specific reason for wanting this information. You are not required to hire a lawyer at the dunning procedure stage. However, experience has shown that the presence of a solicitor ("Abogado") can simplify the whole process significantly for foreign citizens, starting with locating the address of the relevant court of law and the filing of the dunning procedure request with the law court. It is not possible to send the request to the court by post. All requests must be filed personally via a so-called authorised representative ("Procurador"). More information on this is provided later on in this article. Provided that the creditor's request fulfils all the given criteria, the court will then send the debtor a request for payment. The debtor is given a period of twenty working days to pay or alternatively challenge the request. If the debtor chooses to challenge the request, the dunning procedure automatically develops into a standard lawsuit. The creditor is given a total of thirty days to file a lawsuit or, if the total monies owed come to less than 3.000 euros, the court will set a date for a hearing, without requiring the claimant to issue a writ beforehand. If the debtor chooses not to challenge the payment request, an official notice of enforcement is issued by the court. This official notice can no longer be challenged or reversed by legal means. It is here that Spanish law differs significantly from many other legal systems: the dunning procedure represents a highly effective means of demanding payment in clear cut cases. As a rule, a lawsuit is only required in a very small percentage of cases.

b) A lawsuit filed with a court of law ("Juicio Ordinario")

If it is necessary to demand a request for payment through a court of law, there is only one way of filing a lawsuit. Original copies of all of the principal documents (such as demands, confirmation of demands, invoices, delivery receipts and so on) must be provided. Furthermore, the solicitor in charge of the case will require a full Spanish power of attorney to be signed. If this POA has been certified by a foreign solicitor, it must always carry the Hague Convention apostille (which is available from the relevant district court). Court cases can vary considerably in length, even within the same Spanish province. However, you should definitely allow at least 1 to 2 years for a case to be resolved.

c) Court and solicitor's fees

After a period of several years during which court fees were waived completely, they were re-introduced in 2003 for specific cases. However, individual persons and smaller sized businesses ("companies of reduced size") are still not required to pay court fees.

Solicitors' fees are calculated according to the amount of money that the creditor is owed. The Spanish bar association has set down a minimum hourly fee. As in other countries, it is illegal to agree on a success fee in advance. It is, however, normal practice for lawyers to request an advance payment to cover their costs and disbursements. As well as the solicitor's fee, there will also be a fee to pay for the authorized representative. According to the Spanish civil code, this authorized representative is responsible for filing the lawsuit with the court of law. Both he or she and the solicitor must sign this document.

When hiring a lawyer, clients usually also authorize him or her to designate an authorized representative on their behalf. However, this authorized representative is not the lawyer's contractual partner but that of the client. As both parties must either attend hearings in person or send a representative in their place, the parties use the services of an authorized representative to deal with all lawsuit related matters in their absence. Among other things, this authorized representative is responsible for presenting writs from the lawyer and receiving summons and notifications from the court. Solicitors working in Spain tend to work with authorized representatives whom they know well and trust, which means that clients are not forced to go out on their own and look for a representative without any assistance.

So to summarise, Spanish law does provide foreign creditors with the judicial means to demand that debtors pay them what they are owed.