

COLLECTING ON BAD DEBTS ABROAD

It may seem obvious, but for exporters, effective debt collection is essential if they are to stop customers turning credit into extended credit and ultimately bad debts. While most businesses now operate some form of domestic debt collection, obtaining payment from foreign customers is a far more complicated process and one which must be carefully considered to avoid wasting time and money.

Issuing and Serving Legal Proceedings

Assuming that the Irish courts have jurisdiction over the subject matter of your dispute, it is possible to issue domestic proceedings for service on your errant foreign customers. An advantage of this is that it lends the creditor some comfort being in the hands of one's home court, particularly if the matter is likely to be disputed and may have to be ruled on by a judge.

It should be appreciated that the initiating proceedings would need to be amended from those used in domestic matters to reflect the time given by the court rules for a foreign customer to acknowledge service.

The proceedings would have to be served upon the defendant and it should be served in accordance with the rules and conventions of their country. It may be necessary to seek the advice of a local lawyer to advise in that regard so that correct service of the proceedings is undertaken. Indeed you may require the local lawyer to physically serve the proceedings for you in any event. It may well be the case that the firm you instructed in Ireland may be party to a network of international offices which can assist in serving the proceedings.

Enforcement

If, once the proceedings have been served, the defendant does not file a defence or indicate an intention to defend the proceedings, it is possible then to obtain judgement in default which can then be enforced using whatever remedies are available in that foreign country.

Prior to the judgement being enforced, it is necessary for an application to be made by a local agent for the judgement to be recognised.

Many European countries are party to reciprocal recognition treaties and the process of recognition of the judgement in the foreign jurisdiction can take place but of course such applications vary in the time they take to complete and expense. In cases where there is no reciprocal recognition and enforcement treaty available, for example in the United States,

it is necessary to effectively issue fresh proceedings citing the terms of the judgement that was obtained and seeking to obtain a quick United States judgment.

Although it is a fairly rare occurrence, it should be noted that there may be countries where the original judgement will not be recognised on religious, national security or public policy grounds. If there is any doubt it is advisable to get a preliminary opinion from local lawyers.

If proceedings have been issued in the foreign jurisdiction in the first place, obviously the need for the judgement to be recognised is alleviated and you can proceed straight to whatever enforcement remedies are available in that country.

This article highlights some of the issues one has to consider when pursuing foreign debtors. A careful examination of the facts of the case, the local situation and the available options will help you reach a sound commercial decision for each set of circumstances.