

## Foreign debt recovery

British firms are constantly encouraged to do more business abroad. But many fear the consequences of incurring bad debts which will be time-consuming and expensive to pursue through the unfamiliar legal system of a foreign country.

Effective debt collection is essential if a business is to stop customers turning credit into extended credit and, ultimately, bad debt.

While most businesses now operate some form of debt collection system which is effective within England and Wales, getting money from foreign debtors can be a far more complicated process which must be carefully considered, planned and carried out to avoid wasting time and money.

In looking at the options open to businesses pursuing foreign debtors, we must work on the assumption that the English Courts will accept jurisdiction over the subject matter of the dispute and will, where required, give permission to serve outside the jurisdiction.

### Issuing and serving the Claim Form

When you issue the Claim Form, it is necessary to endorse the fact that the English Court will have jurisdiction over the matter and, where applicable, refer to the relevant international convention. The Claim Form also needs to be amended from that used in domestic matters to reflect the time given by the Court Rules for the debtor to acknowledge service.

Physically serving the Claim Form is the first difficulty a creditor faces. If the debtor is in England or Wales it should not be a problem. But when they are overseas, the Claim Form must be served in accordance

with the rules and conventions of that country.

The Claim Form may have to be translated into the language of the debtor's country of residence and an Affidavit, or other such local equivalent proof of service, should be obtained.

Most major law firms, including Thomson Snell & Passmore, are now part of a network of international offices which will handle the serving of the Claim Form in their territory.

Once the Claim Form has been served, the debtor will have a prescribed period to file its Defence. If there is no response, judgment in default can be entered in the usual way.

If a Defence is served, the matter will proceed in the normal manner and the directions of the Court will determine the future conduct of the dispute.

### Enforcement

Any decision to pursue a foreign debt must be a commercial rather than an emotional one. You may be confident you will win judgment in your favour but, before proceedings start, you must consider whether that judgment can actually be enforced.

If it can't, there is clearly little to be gained other than a moral, if somewhat pyrrhic, victory.

If the debtor has assets anywhere in England, the European Union or European Economic Area, enforcement of the judgment can take place against those assets in the normal way allowed by the

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courts of that country. If, however, there are no assets, it is more difficult.

Many countries, particularly those in the Commonwealth, have some form of reciprocal recognition and enforcement of judgments treaty with the UK. When that is the case, providing the necessary procedural steps of registering the English judgment in the foreign country are complied with, enforcement will be possible through the usual methods permitted in that country.

Where no such reciprocal recognition and enforcement is available, the creditor is usually only able to enforce judgment by suing on the English judgment in the debtor country's courts. The aim is to get a separate and locally recognised judgment which **CAN** be enforced.

Both the procedure and likelihood of obtaining quick judgment based on that entered in England varies greatly from country to country and those which have good trading and diplomatic links with the UK are usually most amenable.

On the other hand, there are countries in which the subject matter and law on which the original UK judgment was based 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.

This information sheet highlights some of the matters which must be considered when pursuing foreign debtors. A careful examination of the facts of the case, local circumstances and the available options will help you reach a sound commercial decision and, where a creditor has a number of regular customers from a particular country, will help put in place a tested debt recovery procedure.

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