



CICM

Powered by
 Baker Ing

AR Factsheet

FRANCE



Powered by
 Baker Ing

FRANCE

Business structure. What types of business structures are there?

- **Entreprise individuelle:** Sole proprietorship with unlimited liability of the owner with their business and private funds.
- **EURL (Entreprise Unipersonnelle à Responsabilité Limitée):** Sole proprietorship with no minimum capital and liability limited to company capital.
- **SASU (Société par Actions Simplifiées Unipersonnelle):** Sole proprietorship with no minimum capital and liability limited to company capital.
- **SARL (Société à Responsabilité Limitée):** A company with two to 100 partners, no minimum capital and liability limited to company capital.
- **SNC (Société en Nom Collectif):** A general partnership company with a minimum of two partners, no minimum capital and unlimited liability of partners.
- **SA (Société Anonyme):** A public limited liability company with a minimum of seven partners, a minimum capital of EUR 37,000 and liability limited to company capital.
- **SAS (Société par Actions Simplifiée):** A simplified joint stock company with no minimum capital and liability limited to company capital.

Data sources. Where can I find information about a company?

- Corporate information is available at Infogreffe, the Register of Commerce: www.infogreffe.com

Credit Checks. Where can I find financial information about a business?

- You can obtain information on the financial state of affairs for companies and industry at Infogreffe. There are also numerous private reporting agencies offering credit checks.

Judgment Search. Can I find out if a business already has a judgment against it?

- Normally you find this information in a credit report. Credit reports are offered as a service online.

Contracting. How do businesses contract with each other and which documents do you need if you have to go to court?

- As a minimum, it is advisable to have at least the following available:
 - Copies of the contract(s)
 - Copy invoices and a full statement of account (including payments and credit notes that have been allocated against the outstanding invoices).
- In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available starting with the contract, orders, confirmations, delivery notes and invoices.
- Every step of the trading relationship between the debtor and the creditor should be provable by documentation.

Retention of title

- In France, regulations on retention of title are very comprehensive and supplier-focused and must be explicitly agreed upon prior to delivery.
- Most importantly, the debtor must acknowledge the retention of title before receiving the first invoice.
- Most companies include retention of title provisions in their general trading conditions. In this case, the debtor must either sign these conditions in advance or you must advise the debtor explicitly that the general trading conditions apply before sending the first invoice.
- It is vital to get proof that the trading conditions have been agreed; otherwise, the benefits of the more complex version of the French retention of title cannot be used to reduce the outstanding amount.
- The retention of title is used in most cases before insolvency proceedings arise. You should be able to prove the existence of the goods in the inventory of the debtor.





Powered by
 Baker Ing

PRE-LITIGATION

Letter before action. Do you have to send a demand letter to a debtor before going to court?

- Before going to court, and even before filing the claim to the enforcement authority, a warning notice to the debtor's registered address is mandatory.
- The warning notice should contain:
 - The name of the creditor and the basis of the claim
 - The total amount of the claim, including any penalty interests
 - Prescription on how to transfer the payment, i.e. bank account etc.
 - A warning that the claim will be enforced through the enforcement authority in case the claim is not settled within from the date of the notice
 - Information on how the object to the claim if not acknowledged by the debtor.
- If this measure has been taken and the payment still has not been made after the two-week notice period (according to the law), the creditor may file for enforcement.

Can you claim interest and collection costs from customers if their payment is late?

- If the contracting parties have not agreed this in the contract, then statutory default interest and collection costs are applicable.
- The creditor may in addition to the claim demand to recover from the debtor:
 - Penalty interest of the claim: 10,0 %
- From a cultural point of view, French debtors are not used to paying debt collection costs, and often the collection cost is used as a matter of negotiation between debtors and collectors.

LITIGATION

Limitation period. How much time do you have before you must start legal proceedings?

- In commercial matters, the limitation period is five years, which may be interrupted by the undertaking of a legal proceeding.
 - The previous limitation period (prior to 17th June 2008) was up to 30 years.

ADR. What forms of Alternative Dispute Resolution are available and are they compulsory?

- ▶ Both Arbitration and Mediation are allowable by law in France, but it is extremely unusual for either party to request them.
- ▶ ADR methods are based on consent. Therefore, a court cannot compel the parties to resort to ADR.

Court Proceedings. What forms of court proceedings are available, and do you need legal representation?

- ▶ Proceedings start with the creditor instructing a bailiff to serve a writ of summons (assignation) on the defendant. The writ of summons sets out the grounds of the creditor's claim and summons the debtor to appear in court. A list of supporting documents must be attached to the writ. The creditor's counsel will then file an official copy of the served writ with the court.
- ▶ In the commercial courts (**tribunaux de commerce**) and main first instance civil courts (**tribunaux de grande instance**), proceedings can be brought either by the service of a writ of summons, or by a joint application filed by both parties.
- ▶ For disputes before the commercial courts, the writ of summons must be served at least 15 days before the hearing. It must also be filed at the registry of the relevant commercial court no later than eight days before the hearing.
- ▶ In the main first instance civil courts, a creditor can obtain a ruling in an expedited manner through a fixed date procedure. The creditor must file a request demonstrating that the case is urgent. In the commercial courts, an accelerated procedure can be initiated through a writ of summons at short notice.
- ▶ Once the writ of summons is filed, a supervising judge is designated to guarantee the fairness of the proceedings, specifically regarding the timely exchange of pleadings and the production of documents, when applicable.
- ▶ The procedure is oral before the commercial courts. However, when the parties are represented by their counsel, they file written pleadings as they do before the main first instance civil courts, and the supervising judge schedules a date for the filing of the briefs.
- ▶ Once the supervising judge decides that the parties have exchanged all relevant arguments in their pleadings, he or she schedules a closing date after which no additional filings are authorised. After the closing of the proceedings, the supervising judge sets the date of the trial hearing.



Powered by
 Baker Ing

Time frame. How long does it take before you can get a judgment against a debtor?

- A commercial case without complexities will take approximately eight to ten months to be heard, which can be doubled for complex cases, a technical dispute or in case of appeal.
- Some jurisdictions, where the judicial system has been rated below the average performance of the country, may take longer to judge cases.
- The expected time frame of an appeal is almost two years.

How much does it cost to go to Court?

- There are two kinds of costs in legal cases:
 - Charged-back costs that the debtor must pay, which are often liquidated by the judge and, in most cases, the costs derive from the judicial procedure and the notification's costs.
 - Those that cannot be charged back to the debtor, such as lawyers' fees. Each party must bear their own lawyers' fees, but the winning party could ask the judge to obtain an indemnity to compensate their expenses.
- In addition, costs of experts might also arise.
- NB: "No-win no-fee" agreements are prohibited in France. However, it is possible to agree with a lawyer a contingency or success fee combined with another method of remuneration (such as hourly rates or task-based fees).

Enforcement of a court judgment. How do you enforce domestic/overseas judgments?

- To become enforceable in France, a judgment must be notified both to the unsuccessful party and its lawyers (for rulings issued by the main first instance civil courts (**tribunaux de grande instance**) and the courts of appeal (**cours d'appel**)).
- After the judgment is notified to the debtor, the debtor has one month to appeal. After that, the judgment becomes executive, meaning that a bailiff can start forced execution. In France, only bailiffs have the authority to handle the enforcement of a judicial decision. At this stage, the debtor has no choice; the debtor either must pay or become bankrupt.
- A judgment will be enforced from the moment it acquires the force of *res judicata* (that is, it is final and no longer subject to appeal), except where the debtor is granted a grace period or the creditor is granted provisional enforcement (**exécution provisoire**) (Article 501, Code of Civil Procedure).



Powered by
 Baker Ing

Insolvency

- The two main procedures are:
 - Receivership
 - Bankruptcy
- Receivership can be converted into bankruptcy, and it is estimated that around 90% of receiverships end up in bankruptcy.
- **Receivership** allows the debtor's activity to be saved due to a continuation plan, meaning that the creditors can expect dividends.
- **Bankruptcy** means the liquidation of the assets when the situation is totally compromised, meaning that the creditors cannot expect any dividends.
- The delay to lodge a claim is two months for French creditors and four months for foreign creditors from the date of the publication in BODACC (official journal).
- The court may decide to build two pools of creditors. The first is made up of committees of credit institutions, and the second contains the main suppliers of the goods or services.
- These committees are invited to comment on a draft recovery plan. The creditors' representatives inform the creditors of the opening of the proceedings, receive their declarations of claims and ask the bankruptcy judge to accept or reject these claims. They alone are empowered to perform acts in the collective interests of the creditors.



CICM

Powered by
 Baker Ing

information in this document is accurate to our knowledge as of October 2020.

The know-how in this fact sheet is not intended to constitute a definitive or complete statement of the law, nor is it intended to constitute legal advice for any specific situation. We do not accept any responsibility for action taken as a result of information provided by us. It is your responsibility to take specific advice when dealing with specific situations. The fact sheet is intended as educational in nature and may not reflect all recent legal developments and may not apply to the facts and circumstances of individual transactions and cases

Nothing in this fact sheet shall be construed or relied on as providing any legal representation, advice or opinion whatsoever on behalf of us or our staff.

Baker Ing

REGISTERED OFFICE

Office 7, 35 Ludgate Hill, London, EC4M 7JN

TELEPHONE

+44 (0)20 1234 5678

EMAIL

admin@bakering.global

WEBSITE

bakering.global

Chartered Institute of Credit Management

The Water Mill, Station Road

South Luffenham

OAKHAM, LE15 8NB

T: 01780 722900

E: info@cicm.com

W: www.cicm.com



CICM

Powered by
 Baker Ing