

Facts and Information of German litigation and court proceedings in commercial cases and civil law

The Lawyers of our Law Firm are specialists in commercial litigations and conducting of court proceedings all over Germany and in various areas of civil law, in purchase law, commercial law, contract law, company law and insolvency proceedings. We offer our experience of 25 years of intensive court practice.

If the debtor does not react to our request for payment (dunning letter/reminders) or telephone calls and all measures taken to force the debtor to payment turned out with no result, the institution of court proceedings are recommended by lack of other possibilities to force the debtor to payment out of court. Please note that our Law Firm is able to represent your interests all over Germany. Our Lawyers are called to the bar at every court in Germany (except BGH).

The basis facts of German court proceedings in commercial cases and civil law:

Before starting any court proceedings we request for your consent and try to get information about the solvency of the debtor.

We kindly ask for your understanding, that besides our offers court fees cannot be covered by our office, meaning that the client has to provide us with the court fees in advance.

The plaintiff has to pay court fees in advance. German courts always require an advance payment of the court fees. Otherwise the court will reject any action. Basically court and lawyer fees are related to a legal table. Therefore this scale of fees is binding by law.

But we would like to point out that in Germany the unsuccessful party in court proceedings has to pay all fees and costs of the court and lawyer fees by Law particularly the fees of the attorney of the opposite party (in case of dismissal of the action).

Therefore the debtor has to take over and to refund all fees (including court fees) in case of a judgment to the favour of the client.

Hence, in case of you being defeated in the law-suit in total, the client would have to pay the fees of the debtor's lawyers (if being mandated anyone) according to the legal schedule. In case of a dismissal in percentage the costs are to be paid at the corresponding rate. Consequence in court proceedings: if the court judges that only a part of the principal claim is justified (f.i. only 10.000,00 from 15.000,00 Euro = 75%:25%) the client is defeated in the law-suit to the corresponding percentage. Therefore the client has to bear costs and fees of legal proceedings to the percentage not been accepted by the court.

Therefore the worst case risk for a law-suit is calculated by

- our fees
- + fees of the Lawyer of the debtor if mandated anyone (same amount as ours)
- + court fees

The court and lawyer fees relate to a legal table which is binding by law. The amount depends on the amount in controversy (amount of claim).

Besides the legal table we offer better conditions to keep your fees small: Often it is possible to achieve a writ of execution/judgment and to collect the debt without investing regular fees in total (in legal dunning proceedings, court summons, "order to pay a debt").

German Law Firms are subject to the German federal law regarding Lawyers Fees (Rechtanwaltsvergütungsgesetz, RVG). Success fees (contingency fees) are basically not legal in Germany and Law Firms are legally bound to charge at the RVG. It is absolutely common to ask for a retainer.

As a matter of course it is in general possible to find an individual agreement, especially in case of multiple debts (no retainer) or the take over of the entire claim management.

Course of court proceedings, litigations:

There are 2 different options to institute legal action at court:

1. Court order to pay a debt, Court Summons:

It is a electronically procedure managed by the court. We file the claim by secured data access to the court. It is similar in cases to achieve an EEO.

This option we choose in every case of debt collection claims.

The court serves the application to the debtor by mail. After some days we will be requested to pay in the legal court fees. To act fast it is necessary that we dispose of the advance paid by the client. Please note that processing at court is not in our hands. Therefore we can not accelerate proceedings in case of delays.

In around 1-2 weeks the court will have served the court order to the debtor and we will know whether it would be possible to serve the order (valid postal address) and whether the debtor objects to the court order or not.

If the debtor does not object to the court order within a time-period of 2 weeks we apply for an enforceable writ of execution. Once more the debtor is entitled to object to the court order within 2 weeks after service.

If the debtor not objects we will receive an enforceable writ of execution.

In case the debtor objects the court will pass the case to adversary proceedings at court meaning that we have to present a written pleading (Statement of Claim) explaining the background of the debt, calculating the claim in detail and to present all proof like

- order, invoices, contract, delivery notes
- witnesses (name and address of persons involved in conclusion and processing of the contract, delivery, kind of performance...)
- all documents supporting the legal position (like e-mails, fax letters ... etc).

If the debtor objects proceedings will be transferred from electronically/databased court proceedings to regular contentious proceedings at court. This can take 2-3 weeks.

Please consider that we offer to charge only the necessary court fees in certain cases of debt collection files to

1. check first if the court can serve court documents (order to pay a debt etc.) - therefore whether it is basically possible to litigate with the debtor at court (because service of court documents is indispensable). This is often a problem.

2. obtain an enforceable writ of execution/judgment if the debtor not objects.

We can withdraw court proceedings anytime without any financial disadvantage if the client decides to stop all activities.

This is the lowest investment possible to pursue the claim.

Therefore an investment of a small sum could be sufficient to achieve an enforceable writ of execution/judgment if the debtor would not object in court proceedings. In case the debtor objects in court proceedings - never mind if the reasons are justified or not - the difference to the entire legal fees is to pay in addition.

In this case we would have to present pleadings to the court and have to attend to a court hearing. We would need all information and documents to substantiate our legal position and to refute allegations of the debtor.

Further proceedings are the same as explained in the following:

2. Institution of a lawsuit by submitting a pleading to the court:

We have file a Statement of Claim in writing to the court explaining the background of the claim and to offer evidence by presentation of documents and witness. We would need all information and documents to substantiate the legal position and to refute the allegations of the debtor.

The court serves the plaint to the debtor by mail (to the debtor's postal address). After some days we will be requested to pay in the legal court fees. To act fast it is necessary that we dispose of the advance paid by the client.

Please note that processing at court is not in our hands. Therefore we can not accelerate proceedings in case of delays.

In around 1-2 weeks the court will have served the court order to the debtor and we will be notified whether it would be possible to serve the order (valid postal address) and whether the debtor objects to the court order or not.

Regularly the court set a respite for a defence, 2 weeks to announce defence readiness in general, further 2-3 weeks to substantiate the defence in detail and in written.

The court can set also a date for a court hearing within this initiatory court order to course of action, at latest after receipt of the defence.

We will receive the pleading of the debtor in written by the court and can reply and refute the allegations in further pleadings.

If the debtor does not react we will obtain a judgement by default.

These proceedings comply with legal requirements of the civil law and usual proceedings. We will inform you about the state and further progress in any case.

Please note that in cases the claim is more than 6,000 EUR the representation by a lawyer is mandatory, therefore the debtor has to pay a lawyer if he intends to defend himself. Often the debtor is not able or not willing to pay or to defend himself because of the efforts he has.

We have to attend to a court hearing.

The court will render a judgment at a date later and we will receive the judgment by regular mail.

Court proceedings regularly take 2-3 months in minimum, in case of necessary taking evidence (witnesses or an expert evidence) up to 6-8 months or more in case of extended and detailed objections.

Please keep in mind that it is not foreseeable whether the debtor defends himself in court proceedings. In that case we would obtain a judgment by default (meaning a very fast end of proceedings).

Herewith the creditor/client has to pay all costs and fees in advance - the court fees and Lawyer fees and it is the problem of following enforcement proceedings by a bailiff or attachment of bank accounts (garnishment) to turn the judgment to payment.

Clients from outside the EU: the debtor could claim for a deposit of security for costs of court proceedings. In that case the court can order to furnish a deposit to the court. The deposit would be refunded by the court in case we succeed in court proceedings.

It is regularly not necessary that the client or a member of your company attends to the court hearing (depends on the judge), except it is necessary that the client or an informed person of the client's company should answer questions of the judge concerning details of the facts (like conclusion of contract, agreements, defects a.s.o).

Please note also that in case the judge need an expert evidence (f.e. concerning the applicable law, different allegations related to facts important to decide the case) the court requires advance payments for the expert expenses as well.

Last we would like to point out that the court can request that all documents are to translate into the German Language by an court authorized translator but regularly not for simple invoices, reminders and e-mails.

3. Court order related to fees and costs of court proceedings:

After termination of court proceedings special proceedings concerning costs and fees in court proceedings follow (called: "Kostenfestsetzungsverfahren").

The court decides by an enforceable court order which party has to bear costs and fees to which amount:

Both parties present their invoices for legal fees and costs (mostly of the lawyer) to the court for fixing of fees and costs by the court according to the regulation found in the judgment or stipulated in a

composition of the parties.

The court verifies which legal fees are legally justified and if they are calculated in accordance to the law and the judgment/settlement.

It is possible to object within one week after service of this court order if the counterparty applies for fees not calculated correctly. The amount is to pay to the opposing party/attorney.

In consequence the client will obtain the legal fees fixed in the court order and will be refunded of the fees and costs he paid to us in case we have succeeded at court.

In case we have no succeeded the opposing Lawyer will request to pay the fees stipulated in the court order.

Please consider that the court order is enforceable. The amount is to pay to the Lawyers.

Proceedings take 2-6 weeks. Therefore it is not possible to settle the accounts finally after receipt of the judgement.

4. Enforcement of the judgment or Appeal?

In most cases the judgment is not final (claim above 600 EUR). The judgment is "preliminary enforceable" meaning that the court orders that the plaintiff must provide a deposit security (bank guarantee) of the total amount of the judgment plus costs of proceedings if he would like to enforce immediately.

Background is that in case of an successful appeal of the opposing party a damage is possible because the plaintiff has possibly enforced the judgment but it turns out later that the judgment is not justified in total or in part.

Therefore the defendant would be forced to claim back the payment maybe abroad or the plaintiff refuses to refund the payment.

Therefore it is recommendable to wait whether the defendant files an appeal, regularly 1 month after service.

The party who would like to file an appeal has a legally fixed time-limit of month to do so.

After 1 month we apply to to declare the judgment final and fully enforceable.