



## GAIN IN SPAIN: FIGHTING BACK DEBT (I)

If we are to believe everything the media reports nowadays, doing business in Spain or with Spanish companies would seem like a definite no-no. While there is some substance to the hype (a record 2,666 companies filed for bankruptcy during the second trimester of 2012), failure to act quickly or take the proper remedies are generally the underlying factors when it comes to bad credit.

It is not always easy dealing with overseas debtors, which, compounded with a lack of understanding of foreign legal systems and judicial proceedings, can only add to the insecurity factor.

This two-part article will try to present in a straight-forward way a clear overview on how to bring judicial proceedings against debtors in Spain. We hope this can serve as a basic reference giving you the opportunity to

make the right decisions.

In Spain, there are three basic stages when recovering a debt through the courts;

- A.- The monitorio proceeding (similar to an order to pay).
- B.- The declarativo proceeding (action to declare the existence of a debt).
- C.- The ejecutivo proceeding (proceeding enforcing a judgement).

The monitorio/ declarativo proceeding only occur if the rights of the creditor are not recognised, (for example, by a cheque or a bill of exchange). Their aim is to allow the creditor to obtain a warrant of execution over their debtor.



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### *A.- Monitorio proceeding*

The monitorio proceeding is a quick and simple way to hear claims up to €250,000. When the debtor is notified of the claim made against him, he must then defend the claim, make a counterclaim, pay or not respond at all.

The debtor has a time frame of 20 days to defend the claim. If he does not do so, the judge will dictate a judgement in favour of the creditor, ordering the debtor to pay the debt. If the debtor pays, the debt is recovered and the process ends.



### *B.- Declarativo proceeding*

If there is a strong chance the debtor might defend the claim, we may want to go directly to a declarativo proceeding. Actually, there are two different types of proceeding depending on, among other issues, the amount of the debt. Debts up to €3,000 go through a fast verbal proceeding (procedimiento verbal) whilst debts over this amount go through a more detailed ordinary proceeding (procedimiento ordinario).

The duration of these proceedings depend on various factors and is impossible to determine beforehand. However, in the verbal proceeding, if the claim is admitted, the Court issues the parties with a summons by which they have 10-20 days to respond to. In the ordinary proceeding, the debtor has 20 days to defend the claim.

In our next article, we will take a look on how to enforce a favourable judgement and see what kind of relief we can obtain.



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