

AITI

Associazione
Italiana
Traduttori e
Interpreti

*Membro della
Fédération
Internationale des
Traducteurs
F.I.T.
www.aiti.org*



DEBT COLLECTION FOR TRANSLATION AND INTERPRETATION SERVICES

1. As prevention is better than cure it is essential to possess a document (letter of commission or contract) proving the job assignment, the amount of work to be completed, work format, agreed fee and type of payment (usually a bank draft). Our website provides colleagues with standard forms suitable for Italian customers www.aiti.org (<http://www.aiti.org/contratti.html>). This part of the website is currently being updated and new forms will be available soon.

Invoice payment terms provided by legislation in force are 30 days (directive 2000/35/CE implemented in Italy by Legislative Decree no.231/02

<http://www.camera.it/parlam/leggi/deleghe/testi/02231dl.htm>).

Like other professionals, translators are entitled to issue an “invoice notice” (the same document as an invoice) followed by the actual invoice when payment has been received.

2. If a dispute should arise, the translator will have to prove the service has been provided and hence that the client has actually received the translation. To be certain of this, fax confirmation is useful because courts do not deem normal e-mail to be certain evidence. To be valid for all legal purposes e-mails must be certified, but this also requires the recipient to be certified.

3. If the client fails to pay within the prescribed time limits, the attached letter of request (attachment 1) can be used to recover the money out of court.

4. If the procedure outlined under point 3 fails, depending on the amount of money owed, a lawyer can be appointed in loco presuming that the an Italian judge has jurisdiction to settle the claim.

Under the Italian legal system the courts of first instances are Justices of the Peace and Law Courts.

Justices of the Peace are honorary magistrates temporarily assigned judicial functions. They remain in office for four years and can only be reappointed once. Their entitlement to hold office ceases on reaching 75 years of age. Justices of the Peace are required to observe the duties provided for magistrates and have jurisdiction for a number of civil claims in terms of value and subject-matter, including the collection of debts of up to 2,500.00 Euro.

Citizens can apply to a Justice of the Peace in accordance with the rules provided by the Italian Code of Civil Procedure both to take legal action by means of a summons and by a special proceeding to request an injunction for payment of a sum, within the limits of jurisdiction for the amount owed. In this case the debt must be liquid and ascertained.

By contrast, the courts have the same jurisdiction for civil claims as judges of the first instance and also have the function of appeal judges for judgements issued by Justices of the Peace.

In short:

If the amount of money owed is less than 2,500.00 Euro the claim can be brought before a Justice of the Peace with territorial jurisdiction (court of the defendant/debtor). For larger sums the claim must be taken to the court in the place where the debtor is resident or has its head offices.

To find a lawyer in Italy, we advise colleagues to contact the AITI regional sections (www.aiti.org/contatti) for the names of lawyers with experience in our sector.

Plainly it will be up to the lawyer to decide which procedure to adopt. Usually, the lawyer will send the debtor another letter of request by registered post with return receipt. Thereafter, one of two possible options can be chosen: a petition for an order for an injunction or service of a summons.

Orders for an injunction are governed by arts. 633 et seq. Italian Code of Civil Procedure. They are summary judgements and hence are usually issued fairly quickly. Written evidence of entitlement is required for an order for an injunction to be granted. Written evidence can be provided by filing the invoice or correspondence containing a unilateral promise. In addition, it must be proved that the other party actually received the translation. As stated above, e-mails only constitute proof in Italy if they are certified, otherwise they only serve as evidence.

If the appointed judge deems there exist the conditions provided by arts. 633 et seq. Italian Code of Civil Procedure, s/he can issue an order directing the debtor to pay the money owed, granting the same a time limit of forty days in which to appeal. If no appeal is filed, the order becomes final and enforcement ensues.

On expiry of the time limit for appeal, the lawyer will draw up the enforcement order listing the sums to be paid (including the lawyer's fees) and the debtor is directed to pay within ten days after receipt of the order.

If the debtor continues not to pay, actual enforcement will take place.

Instead, if the debtor appeals against the order for an injunction, the claimant's lawyer must promptly serve a writ of summons, thereby bringing a legal action.

If the documentation available is not sufficient to obtain an order for an injunction, the lawyer can serve a writ of summons.

The length of court cases in Italy varies widely from one court to another. Civil claims brought before courts of the first instance in the area under the jurisdiction of, e.g., Brescia Court of Appeal for the year 2004 lasted from 2 to 3 years. To this should be added any time required for enforcement if the debtor fails to pay spontaneously.

How much does debt collection cost?

Appointing a lawyer to write a letter of request is not necessarily expensive. This action may itself result in recovery of the money owed as the debtor will realize that even a creditor resident abroad seriously intends to pursue his/her claim.

In general, Italian lawyers' rates include costs for each single action taken by the lawyer (e.g. collecting documents from court, examination of the order for an injunction, etc.) in addition to fees.

When a court action is planned the first thing to make sure of is that the debtor has not been declared bankrupt.

Usually a lawyer will request an appropriate advance sum for costs.

As the lawyer's fee will depend on the amount of work actually done (number of hearings, etc.), which in turn depends on the behaviour of the other party, it is difficult to foresee exactly how much the whole proceeding will cost.

In addition, the Court's judgement will often order each party to pay its own costs, or order the other party to pay all costs, fixing an overall amount for costs and legal fees.

However, this does not mean that the lawyer cannot expect fees from his own client in addition to those awarded by the Court judgement.

In July 2006 the so-called "Bersani decree" ([d.l. 4 luglio 2006, n. 223](#)) entered into force, providing a number of innovative changes and quashing the minimum fee for lawyers with a prohibition on contingency fee agreements.

This makes it possible to stipulate a written agreement with the lawyer beforehand providing for a fixed fee, proportional to the result obtained, etc.

Model letter of request

Spettabile

XY srl

P.IVA

RACCOMANDATA A.R.

Data

Oggetto: sollecito pagamento della fattura n. 00 del 00.00.00

Spett.le Ditta

La presente per invitarVi formalmente al pagamento della somma di 00,00 € da Voi dovuta a saldo della fattura n. 00 del 00.00.00 oltre agli interessi legali maturati fino ad oggi nella misura di 00,00 € e maturandi previsti dal D.lgs 231/2002 nella misura attualmente di 00 % fino alla data del saldo.

Conseguentemente, Vi invito a voler provvedere al versamento delle somme sopra indicate con bonifico sulla banca sotto indicata entro e non oltre dieci giorni dal ricevimento della presente, con avvertimento che, in difetto, mi vedrò costretto/a a tutelare nelle sedi giudiziali meglio viste e ritenute i miei interessi nei Vs. confronti addebitandovi ex art. 6 del D.lgs. 231/2002 i costi del recupero.

Distinti saluti