

Collecting unpaid invoices in France

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When undertaking procedures for the collection of invoices not paid at the due date, your chances of success will be better if you take action in the order set out below:

1. Reminder by phone or e-mail
2. Reminder by ordinary mail
3. Reminder by registered (“recorded signed for”) mail
4. Notice to pay (*mise en demeure*)
5. Payment order procedure (*injonction de payer* - model form at <http://www.justice.gouv.fr/formulars/article/Form13947v01.pdf>)
6. Action before a court (*tribunal d'instance* or *tribunal de commerce*)

When you make a reminder phone call, be careful to note the date, the time and the name of the person you speak to. If you prefer to send an e-mail, be sure to keep a copy.

If you do not get any results in the next week, you should follow your call or e-mail up with a letter by ordinary mail. Keep a copy with a note of the date you sent it.

In many cases, the problem is solved after the reminder call or the letter by ordinary mail. Delays may be due to the client's poor organization, loss of the invoice, misfiling under paid invoices, lengthy procedures for payment of suppliers (often the case with large organizations) or quite simply because clients forget, being more worried about getting payments from their own clients than about paying you. However, this is unfortunately not always the case and clients may refuse to pay or act in bad faith.

If you receive no reply to your letter by ordinary mail, send a registered/recorded signed for letter and tell the clients that they will be liable to interest charges for delays if they do not pay you within a given time (e.g., a week). Send this by registered mail with acknowledgement of receipt (*lettre recommandée avec accusé de réception*); keep a copy for yourself and be sure to keep the acknowledgment of receipt when it arrives.

The next step is to send a notice to pay (*mise en demeure*) with application of interest on late payments. This interest is provided for under article 1153 of the Code Civil, a translation of which is given below.

Code Civil article 1153

(Loi du 7 avril 1900 Journal Officiel du 10 avril 1900)

(Ordonnance n° 59-148 du 7 janvier 1959 Journal Officiel du 10 janvier 1959 en vigueur le 11 août 1959)

(Loi n° 75-619 du 11 juillet 1975 Journal Officiel du 12 juillet 1975)

(Loi n° 92-644 du 13 juillet 1992 art. 5 Journal Officiel du 14 juillet 1992)

- Where an obligation is limited to the payment of a determined sum of money, the compensatory damages for delayed performance may never consist of anything other than the award of interest at the legal rate, except where particular rules of trade or surety apply.
- Such interest is due without the creditor having to show any evidence of loss.
- The interest is only due from the date of notice to pay, or of an equivalent such as a sufficiently forceful letter, except where the law provides that interest accrues automatically.
- A creditor who suffers, due to the bad faith of an undischarged debtor, loss or damage other than the debtor's failure to make payment at the due date, may obtain compensatory damages and interest distinct from interest for delayed payment.

The notice to pay (*mise en demeure*) must be sent by registered mail with acknowledgement of receipt (*lettre recommandée avec accusé de réception*). As in the case of the first reminder by registered/recorded signed for mail, you should be careful to keep a copy of your letter and the acknowledgement of receipt when it arrives.

The last resort before court action is the payment order (*injonction de payer*) procedure. This enables you to obtain a right of enforcement quickly and less expensively, entitling you to seize assets without having to file a suit against the debtor (see attached note).

If the debtor gives notice of refusal to pay within 30 days following the issue of an order, the parties will be called before the competent court (*tribunal d'instance* or *tribunal de commerce*, according to the case).

The following documents are attached:

- model letters for different types of reminder
- payment order (*injonction de payer*) form
- a note explaining which court is competent
- a note specifying procedures for the payment order (*injonction de payer*)

(FORM — NOTE: THIS ENGLISH TRANSLATION IS FOR INFORMATION ONLY, AS CREDITORS WILL USE THE FRENCH VERSION WITH FRENCH CLIENTS IN FRANCE. DOWNLOAD THE FRENCH VERSION FROM THIS SITE)

**Reminder by ordinary mail
without acknowledgement of receipt,
to be sent after phone or email reminder**

Unpaid invoice

Ref. Estimate no. Invoice no.

Dear Sir/Madam,

On examining our accounts, we note that, failing mistake or omission on our part, you have not, at today's date, settled the balance on our invoice no. _____ dated _____ for the sum of € _____ including tax.

We would be grateful if you could pay these fees as quickly as possible.

Certain that this is an oversight on your part, we thank you in advance.

Yours sincerely,

(signature)

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**Registered/Recorded signed for letter with acknowledgment of receipt
without notice to pay (*mise en demeure*)
after reminder by ordinary mail**

Re: unpaid invoice

Ref Estimate no. Invoice no

Dear Sir/Madam,

On examining our accounts, we note that, failing mistake or omission on our part, you have not, at today's date, settled the balance on our invoice no. _____ dated _____ for the sum of € _____ including tax.

We remind you of your obligations and we would be grateful if you could **pay these fees by return.**

If we have not heard from you within one week from the date we receive acknowledgment of receipt of this letter, we will initiate recovery procedures. You would then be liable for interest charges on late payment.

If you have sent your payment in the meantime, please ignore this letter.

We look forward to hearing from you, and trust you will understand the interest of an early settlement of this matter.

Yours sincerely,

(signature)

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Notice to pay (*mise en demeure*)

Registered letter with acknowledgment of receipt

**to be sent after registered letter with acknowledgment of receipt without notice to pay
(*mise en demeure*)**

Re: unpaid invoice

Ref Estimate no. Invoice no

Dear Sir/Madam,

Despite several phone calls and letters, we note that you have still not paid our invoice no. _____ due by _____ for a sum of € _____ including tax.

By this letter, we give you notice to pay us, as principal, the sum of € _____. As provided under article 1153 of the Code Civil, this amount will be increased by addition of interest on delayed payments calculated in accordance with the conditions set out on the invoice.

We remind you that this interest accrues from the date you receive this letter.

If you have not paid within two weeks from the same date, we will take court action to obtain payment of the amounts due.

If you have sent your payment in the meantime, please ignore this letter.

Yours sincerely

Paris (date)

Signature

(plus business stamp where applicable)

Unpaid accounts — which court is competent?

The table below shows which court you should go to for recovery of an unpaid invoice, following recent changes to competences of *juges de proximité*.

Three points are to be noted regarding these changes. *Juges de proximité* are now competent **if the unpaid amount does not exceed €4,000** (previously €1,500), and **both individuals and corporate entities (companies, associations, etc) may bring action before them**, even concerning a business claim.

There are also, however, two new restrictions: *juges de proximité* no longer have any competence concerning consumer credit and housing leases, whatever the amount owed, although they can order the return of tenants' deposits. You should also remember that, as in the past, there is no appeal from the decisions of *juges de proximité*.

Source: Act 2005-47 dated January 26, 2005, p. 1409, Journal Officiel January 27, 2005

Which court is competent for debt recovery?

The creditor is a commercial company or has the status of a <i>commerçant</i> as defined in the Code de Commerce	
The debtor is a commercial company or has the status of a <i>commerçant</i> as defined in the Code de Commerce	<i>Tribunal de commerce</i>
The debtor is an independent professional, an artisan as defined in the Code de Commerce, a farmer or a private individual	<i>Juge de proximité</i> if the claim does not exceed €4,000 <i>Tribunal d'instance</i> if the claim is between €4,000 and €10,000 <i>Tribunal de grande instance</i> if the claim exceeds €10,000
The creditor is an independent professional, an artisan as defined in the Code de Commerce, a farmer or a private individual	
The debtor is a commercial company or has the status of a <i>commerçant</i> as defined in the Code de Commerce	<i>Juge de proximité</i> if the claim does not exceed €4,000 <i>Tribunal d'instance</i> if the claim is between €4,000 and €10,000 <i>Tribunal de grande instance</i> if the claim exceeds €10,000 <i>Tribunal de commerce</i> if the creditor so wishes, whatever the amount of the claim
The debtor is an independent professional, an artisan as defined in the Code de Commerce, a farmer or a private individual	<i>Juge de proximité</i> if the claim does not exceed €4,000 <i>Tribunal d'instance</i> if the claim is between €4,000 and €10,000 <i>Tribunal de grande instance</i> if the claim exceeds €10,000

from the review RF Conseils, vol. 162 - March 2005

Injonction de paiement procedure

When?

After several reminders (at least two) have failed to obtain settlement of an unpaid account.

Objective

An *injonction de paiement* procedure enables creditors to obtain enforceable rights quickly, and at lower cost, allowing them seize the debtor's assets.

The procedure may be used for claims of the following kinds in any amount.

- any claims for a sum of money in an amount determined by contract or obligation (e.g., an invoice)
- any claim evidenced by a bill or acknowledgement of debt

How

1. The claimant has to draw up an application, using either plain paper or a pre-printed form (see *injonction de payer* model below) and send this to the court registrar's office (*secrétariat greffe*) together with supporting documents.

2. The application must include the full names, professions and addresses of creditors and debtors, the amount claimed, the basis for the claim and a list of the accompanying documents.

The application must be accompanied by all documents evidencing the claim: copies of unpaid invoices, accepted bills returned unpaid, letters or contracts constituting undertakings to pay, order forms, etc.

3. The application is then filed with:

- the registrar's office (*secrétariat greffe*) of the *Tribunal d'instance* if the debtor is not a *commerçant* or did not contract the debt in connection with commercial activities
- the President of the *Tribunal de commerce* where both the creditor and the debtor are *commerçants*.

Note: territorial jurisdiction is defined by that applying to the debtor's place of residence

Stages in the procedure

1. Judge's consideration of the claim

If the judge considers that the claim is rightful, in whole or in part, he or she will issue an *ordonnance d'injonction*, ordering the debtor to pay the money claimed by the creditor.

- If the claim is only partly met, the judge considers that only part of the claim is warranted.

The creditor then has two options:

- accept the partial payment and to serve notice on the debtor the debtor by *huissier* (law officer)
- not give notice of the judge's order and follow the ordinary procedure for recovery through action before the *Tribunal d'instance* or the *Tribunal de commerce*.
- If creditor instead accepts the judge's ruling, it is his/her responsibility to serve notice on the debtor.

2. Notification of the court decision

The court registrar (*greffier*) addresses certified copies of the creditor's claim and the judge's order to the creditor, who then has to serve notice on the debtor.

The creditor must **serve notice on the debtor within six months from the date of the order.**

This notice represents an injunction on the debtor, who then has three options

- to pay the amount indicated in the order, thus bringing the court procedure to a close
- **to file a protest with the court registrar within a month of receiving notice** if there are facts to be presented in his defence.

If the debtor protests, he/she will have to contest the rightfulness of the claim or compliance with proper procedure, making a filing with the court registrar (*greffe*) in the month following notice of the order.

On receiving the debtor's notice of protest the registrar (*greffier*) summons the parties to a court hearing conducted under the general rules of law and the court's ruling supersedes the previous order (*ordonnance d'injonction de payer*).

If the court rules in the creditor's favour, the creditor serves notice on the debtor and failing payment may undertake to seize the debtor's assets.

However the debtor may also file an appeal within the month following the court's ruling.

- **to not reply within the month following service of notice.** In this case, the creditors must
 - apply, within a month following the lapse of the time allowed for the debtor to protest or accept the order, to the registrar's office (*greffe*) of the court that issued the order, either by direct declaration at the office or by letter, for an enforcement note (*formule exécutoire*) to be placed on the *ordonnance d'injonction*
 - supply the *ordonnance d'injonction* with the enforcement note to a *huissier*, who will undertake enforcement.

If the debtor does not pay, the creditor can then give this document of entitlement to a *huissier* for the purpose of seizing the debtor's bank account or material assets.