

# International Debt Collection Handbook

Sixteenth Edition

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# Introduction

## Welcome

We're extremely proud to present you with the 16th edition of the International Debt Collection Handbook. This edition includes three new countries: Bosnia and Herzegovina, North Macedonia, and Serbia.

Since its launch in 2008, the International Debt Collection Handbook has quickly established itself as a critical support tool for collection decisions in foreign countries. International debt collections and country-specific legal systems create challenges that affect every business. The International Debt Collection Handbook is an invaluable and reliable tool that helps decision-makers all over the world select the right approaches to debt collections. It outlines the diversity and complexity of debt collection approaches for each country included in the handbook, often with an immense amount of details. The International Debt Collection Handbook draws from the expertise of Atradius Collections' local offices and explains the different stages of amicable settlements, regulations, legal proceedings, and insolvency procedures in each country.

No business is immune to the risks associated with international trade or poor payment behaviour. Maintaining and protecting your cash flow are absolutely crucial. Having knowledge of amicable collections and the country-specific legal phases surrounding collections is vital for survival in a global economy. By relying on our local expertise as detailed in the International Debt Collection Handbook, you can ensure that you are following a professional and successful approach.

I'm sure that you will find the International Debt Collection Handbook a highly useful, in-depth resource for all your business decisions relating to debt collections.

And if you need help with international debt collections, we are there.

Kind regards,



Rudi De Greve  
Global Operations Officer, Atradius Collections

## About Atradius Collections

Atradius was originally founded as NCM in the Netherlands in 1925 and was created with the goal of improving trade for companies in the Netherlands. In Germany, Atradius' roots stemmed from Gerling Credit, which was established in 1954 and operated solely out of Germany until 1962, when it opened its first international office in Switzerland. In Spain, Crédito y Caución was founded in 1929 and focused on growing steadily to become the dominant credit insurance and surety company on the Iberian Peninsula.

The heritage, knowledge, and exemplary service standards of these three companies are now combined within the Atradius Group, creating as part of its activities Atradius Collections - a global leader in business-to-business (B2B) debt collections.

With such a pedigree and global reach, we're equipped to not only leverage successful debt collections on behalf of our clients, but also set out to maintain high standards in the market. We've become a key player in the B2B collection market.

As a result of being a separate division within the Atradius Group, we hold a strong position, sharing history, knowledge, and reputation, which help ensure that we deliver when it comes to collecting outstanding debts, managing clients' accounts receivable, or guiding them along the route to growth. We provide leading B2B collection services, plus a range of solutions that cover receivables management's needs. Our integrated worldwide network and operations are unique in the market. Our online collection management system allows our clients to place and manage debt cases 24 hours a day, 365 days a year.

With a presence in 40+ countries and an extensive network worldwide, we serve over 16,000 businesses and collect more than EUR 350 million per year. As part of the Atradius Group, we look back on over 90 years of global credit management industry experience, positioning our business as a leading international trade invoice collection company.

# Germany

## Industries



Chemicals



Construction materials



Electronics



Food



Machines



Minerals



Textiles



Transport

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## Chance of collecting

**50%–75%** ✓

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# 1. Amicable collections



## 1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law.

When there is a dispute, we aim to reach an amicable solution between you and your debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as all standard terms previously agreed to). All of our investigations are completed with the assistance and agreement of our legal team. Debtors are allowed to ask for a signed original power of attorney to be presented to them.

## 1.2. Local agents

Currently, we don't offer field service to visit debtors in Germany.

## 1.3. Interest

We always charge debtors for interest. It's calculated from the base rate set by the Deutsche Bundesbank plus 9% on a daily basis (see the European Directive 2011/35/CEE Article 3 in conjunction with paragraph 288, section 2 of the German Civil Code).

From a cultural point of view, German debtors are used to paying late payment charges, although the actual amounts of interest payment are considered a matter of negotiation between debtors and collectors.

## 1.4. Debt collection costs

In Germany, under the German Civil Code paragraph 280, section 2 and 3, and paragraph 286, debt collection costs are chargeable to debtors, representing the creditors' claims for late payment. If you have a special contractual agreement, this can be taken into account as long as the debtor has previously agreed to the terms.

From a cultural point of view, German debtors are used to paying debt collection costs, though often the actual amounts of these costs are considered a matter of negotiation.

## 1.5. Prescription

The general prescriptive period in Germany is three years, starting at the end of the year a claim becomes due. Transport claims become prescribed within one year, starting from the delivery under the Convention on the Contract for the International Carriage of Goods by Road (CMR) of Geneva.

## 1.6. Sources of information

In Germany, we contact credit-reporting agencies to assess the financial situations of debtors, including their real estate and other enforceable assets. We combine this with our own phone contacts to get accurate impressions of the debtors' financial situations and to advise on the next steps. Other public registers are available as well.

# 2. Retention of title

Germany has very comprehensive, seller-focused regulations on retention of title (ROT), which must be explicitly agreed to prior to delivery. Most importantly, the debtor must acknowledge the ROT clauses before receiving the first invoice.

Most companies include ROT provisions in their general trading conditions. In this case, either the debtor must sign these conditions in advance, or you have to advise the debtor explicitly (e.g. with a note in the order confirmation) that the general trading conditions apply before the first invoice is sent. It's vital to get proof that the trading conditions have been agreed to. Otherwise, the benefits of the more complex version of German ROT clauses can't be used to reduce the outstanding amount.

There are three different kinds of ROT.

### Basic ROT

The goods supplied remain the legal property of the seller until full payment. The seller can or must get the goods back.

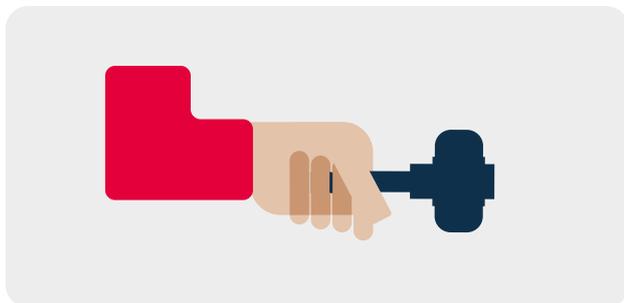
### Increased ROT

This is retention of open accounts. In the course of an ongoing business relationship, the supplied goods remain the legal property of the seller until all the outstanding amounts from the open account or business relationship have been fully paid.

### Extended ROT

This is assigned to sellers in advance. In accordance with §354a of the Commercial Code, advance assignments are effective despite non-assignment agreements between the buyer and any third party.

### 3. Legal collections



#### 3.1. General information

The modern German legal system is composed of public law, which regulates the relationships between citizens and the state, and civil law, which regulates the relationships between two people or companies.

Entering into legal proceedings is possible without a prior warning to the debtor. However, all courts try to mediate between the creditor and debtor, and, in order to shorten the amicable phase of legal proceedings, they may ask for proof that all the pre-court efforts didn't reach a conclusion and will ask to see all the prior correspondence in order to give a quick and final judgment.

#### 3.2. Required documents

In order to apply a legal dunning procedure, we require copies of the contracts, invoices, and statements indicating the payments and credit notes that have been made for the outstanding monies.

In the case of a regular lawsuit procedure, copies of all the contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices. Every part of the trading relationship between both parties should be provable by documentation.

In case of dispute, all the notes of the conversations between you and your debtor should be kept and given to our lawyers.

In the case of verbal negotiations, we require the visit or negotiation reports and the names of any witnesses.

#### 3.3. Legal dunning procedures

This type of proceedings is only applicable to monetary debts where the debtors are traceable. It's a quite short and cost-effective measure.

#### 3.4. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or after the legal dunning procedure if the debtor has appealed.

A written pre-procedure is usually issued. Both the plaintiff and defendant must exchange opinions and proof by letter until the judge believes all the relevant information needed to render a judgment has been received. In this case, a hearing is scheduled, during which both parties must be present. After the hearing, the judge sets a date to issue the final judgment, and both parties will be informed about the outcome in writing by the court.

#### 3.5. Appeals

Appealing against a judgment (the threshold is EUR 600) is possible. That will trigger a second verdict by the court of second instance (local court to district court, district court to higher regional court).

In the case of third instance, the review will be restricted to a check on whether or not the statutes were applied correctly. Any later amendment of facts or proof isn't permissible.

#### 3.6. Expected time frame

The average duration of a legal dunning process is between eight and 12 weeks, whereas a court procedure can take 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on both sides.

#### 3.7. Costs and interest in the legal phase

Any costs incurred during a civil law procedure (court fees and lawyers' fees) are determined by the provisions of the RVG (law on lawyers' fees) and the GKG (law on court fees) and aren't subject to any negotiation.

All costs are dependent on the outstanding principal amount. There are different fees that can apply during the proceedings, making it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise.

Extrajudicial interest and costs can be claimed as part of the outstanding monies during legal proceedings. Approximately 60% of German courts allow this additional claim, but the outcome depends on the court and judge. In all cases, the losing party has to bear the costs of the legal proceedings according to paragraph 91ff. of the German Code of Civil Procedure.

In the case of a legal settlement, the parties bear the costs of the corresponding proceedings in proportion to their prevailing or failing.

## 4. Enforcement

### 4.1. Enforcement in debt

You can block the bank accounts of the debtor or block the debtor's claims against tax offices, life insurance, shares in businesses, corporate shares, or any possible claim the debtor may have against any third party. This usually proves very effective and can save costs when enforced as part of the judgment. Very specific information, such as the debtor's bank account details and any information about their corporate shares or shares in businesses, is required for this kind of enforcement.

In all cases, the court where the debtor (the garnishee) resides is responsible for single enforcement actions.

### 4.2. Expected time frame

Enforcement in debt generally takes only four to eight weeks.

Enforcement in movable property, however, often needs six to nine months or longer, due to a lack of bailiffs and large backlogs.

## 5. Insolvency proceedings



### 5.1. General information

Insolvency proceedings – whether regular insolvency, insolvency plans, or individual insolvency – are a kind of collective enforcement by all the creditors against the debtor. With the start of preliminary proceedings, all the individual enforcement is suspended, and only when the insolvency proceedings don't start will the individual enforcement continue.

The aim of insolvency proceedings is to pay out all the creditors with the same quotas by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

### 5.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check whether sufficient assets are available to cover the costs of the proceedings (court costs and costs of liquidators). If these costs are deemed to be covered, then the insolvency proceedings start and a liquidator will be appointed; usually, this is the preliminary liquidator. If any other route is followed, the court will reject the declaration of bankruptcy due to insufficient assets.

If the proceedings start, the creditors have to lodge their claims before the announced deadline and apply for ROT. All the lodged claims are checked before the filing hearing, usually within three months after the start of the proceedings. If the lodging is done after the deadline, the claim can't be checked before the filing hearing, and a second hearing near the end of the proceedings (in general, after two to four years) has to be announced. For late claim lodging, an additional cost of EUR 22 is incurred, and the confirmation of the debt will be delayed.

The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts will receive dividends.

ROT is handled separately according to what was agreed to.

### 5.3. Required documents

In order to lodge a claim, we need:

- An original power of attorney
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

### 5.4. Expected time frame

The deadline for lodging claims is one to three months, depending on the complexity of the proceedings, which start from the adjudication order ("Insolvenzeröffnungsbeschluss").

The checks on the lodged claims take place one to three months after the deadline for lodging claims.

The total duration of insolvency proceedings is between four and seven years – sometimes even more than 10 years.

### 5.5. Pools of creditors

If a bigger company goes bankrupt, the actual insolvency proceedings will often be accompanied by a second set of proceedings called pools of creditors. In this case, the creditors join in a pooling agreement usually founded by credit insurance companies or banks.

The aim of the pool is to accumulate all the claims of the creditors who delivered goods under ROT clauses. The creditors have to prove that the ROT clauses were agreed to. They then transfer their rights to the pooling arrangement and participate in the refunds of the sale of all the debtor's secured goods with the quotas of their confirmed credits.

### 5.6. Rescission

The liquidator can dispute payments made by the debtor within three months prior to the declaration of bankruptcy. A longer period – up to 10 years – is possible for some special forms of payment (practical experience shows an increasing number). If the liquidator disputes these payments, the creditors have to refund the liquidator plus interest and can only lodge the corresponding debts instead.

## 6. Arbitration and mediation

If you and your debtor agree to an alternative dispute solution, there are two options available: arbitration and mediation or conciliation.

Agreeing to a private tribunal has a number of advantages compared to regular legal proceedings. It's quicker as the courts are less occupied, there are no appeals, and the hearing and process are confirmed. However, agreeing to arbitration also means excluding the jurisdiction of ordinary courts. Arbitration in Germany is based on the rules of the United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration and is run by the ordinary courts, the German Chamber of Commerce and Industry, or a professional arbitrator. The choice belongs to both parties agreeing to arbitration.

The second way of solving a dispute is by mediation or conciliation proceeding, which focuses on finding the root cause of the dispute in order to reach constructive agreements and solutions for both you and your debtor. Mediation or conciliation is carried out by professional organisations like the German Chamber of Commerce and Industry or by professional mediators. There are now increasingly more attorneys who specialise in mediation. The new agreement isn't a judgment, but a kind of contract.

# Case study

## HP Inc.

### At a glance

HP Inc. creates technology that makes life better for everyone, everywhere.

- **Industry:** Information technology and services
- **Market:** Global
- **Challenge:** Recovering invoices from difficult, resource-intensive cases
- **Solution:** Amicable collections by Atradius Collections
- **Result:** HP Inc.'s number of recovered invoices increased significantly. The collected amount was maximised while its internal collection workload was minimised. HP Inc. has been in partnership with Atradius Collections for over 10 years

### Debt collection approach

Collecting unpaid invoices from commercial customers took an unwanted heavy toll on HP Inc.'s resources. The customers remained unresponsive and the recovery rate was disappointing.

That's when HP Inc. decided to use our amicable debt collection service.

### Amicable collections to recover ageing and difficult cases

"Atradius Collections has both the global and local know-how," says Alex Gasca, Global Default and Recovery Manager of HP Inc. "There were lots of cases and the success rate of Atradius Collections was very high. For some cases, we were simply unable to collect the debts. But right away, Atradius Collections achieved impressive results."

HP Inc.'s accounts receivable became more efficient then. The next step is to set up a monthly challenge where we discussed HP Inc.'s most difficult collection cases and took over from there. Because of this close cooperation, we've gained deep-seated knowledge of HP Inc. and that makes for favourable outcomes.

"Atradius Collections continues to get results – even with the toughest cases," says Gasca.

### Tailored processes to increase recoveries with minimal internal efforts

These days HP Inc. has shifted focus to the most time- and effort-consuming debt cases. It has developed a hybrid approach that includes us as part of its internal strategy. "From the point we hand over cases to Atradius Collections, the work and man-hours put into them drop to close to zero. Because Atradius Collections follows up for us – from providing incentive payment plans to handling situations. We get to keep internal efforts to a minimum while also getting recoveries," says Gasca.

### Result

"Atradius Collections gives us peace of mind," says Gasca. "It also gives our senior executives comfort that we are not just writing off. We are now moving cases to someone who can help with recovery."

Looking back on the long-lasting partnership, Gasca says, "We are pleased that from the outset, Atradius Collections has been open, transparent, and constructive – even on a personal level. I believe that the relationship we have is truly excellent and HP Inc. is very happy with it."

And the key to this fruitful collaboration? "We share the same mission: making HP Inc. more profitable," says Gasca. "Collecting debts – the big challenge – has worked out very well from the earliest cases to today's. I'm really impressed with Atradius Collections. Yes, I am."

If you need to recover commercial debts worldwide like HP Inc., please contact our office closest to you. Our local offices' contact details are at the end of this handbook. We will follow up with the most suitable solutions to collect your commercial debts.

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### About Atradius Collections

Through a presence in 40+ countries, we provide commercial debt collection services in 96% of the countries across the world. Our wide breadth of services, ranging from accounts receivable outsourcing to third-party collections, helps companies around the globe recover unpaid invoices. Atradius Collections forms part of Grupo Catalana Occidente, one of the leading credit insurance companies in Spain and worldwide.

If you find this handbook useful, please visit our website [www.atradiuscollections.com](http://www.atradiuscollections.com). There you will get more free publications focusing on the global economy, industry analyses, and advice on credit management and current business issues.

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