

## **Introduction**

OnlineMahnBescheid® helps you assert legal claims for overdue payments against German debtors.

As a creditor of unpaid accounts you want to see your money as quickly and with as little effort as possible. But often claims do not progress beyond repeated demands for payment that debtors refuse to or cannot pay. The legal firm Striegel & Kiau in association with ERGOKONZEPT AG helps creditors assert their legal rights.

The following pages contain information and helpful hints on effective dunning procedures. You can even use our online form to apply for a court payment order, without having to leave your computer, at any time of the day or night.

## **The legal dunning procedure in Germany**

Payment of an overdue invoice can be legally enforced either by initiating a court action or by applying for a court order. In cases where the invoice is undisputed, a court order is the more effective way to quickly gain an executory title. This is important for two reasons: firstly, only claims with an executory title from the court can be enforced by way of compulsory execution, and secondly, such claims are not subject to short expiry deadlines. A claim that has been legally established by way of a final court payment order can be enforced for up to thirty years.

## **Requirements**

The following conditions should be fulfilled when applying for a court order for payment of a debt:

### You have a valid claim for payment

that can be proven by an invoice, reminder or contract, etc. It is important that you be able to prove the validity of your claim, as the case goes to court if the debtor contests the court order or appeals the writ of execution, and the court will then check to see if your claim is justified.

### You know where your debtor is

so that the court order can be delivered to the right address.

### The payment is due

A payment falls due at the point in time when a creditor has the right to demand it. The due date can be stipulated in an agreement or on an invoice, for example.

### The debtor is in default

(Note: a debtor is not automatically in default of payment when a payment is overdue.)

- A debtor is in default upon receipt of a payment reminder from the creditor after the payment falls due.
- A debtor is also in default without receiving a reminder if:
  - A calendar date has been stipulated for payment (e.g. "Please pay by 31 January 2006 at the latest.")

- The due date is preceded by a performance and the due date can be calculated from this point in time (e.g. "Please pay two weeks after delivery."), or if
  - The debtor seriously and finally refuses to make payment.
- A debtor is also deemed to be in default when he, she or it does not pay an account within 30 days of payment becoming due and has received an invoice or equivalent request for payment. This applies to consumers only if special reference is made to the default provision on the invoice. Consumers are all natural persons who enter into a legal transaction for a purpose that cannot be deemed to be part of their professional activities.

The costs of enforcing the outstanding claim can be charged to the debtor from the moment the debtor is in default. Such "damage caused by default" can only be claimed if it can be directly attributed to the debtor's failure to make payment. For example, the cost of using one's own employees to collect claims cannot be charged as damage caused by default, but the cost of hiring a legal attorney to do so can. This applies both to the interest on arrears and the legal fees for the court order.

### **The legal dunning procedure**

The legal dunning procedure is initiated with an application for the issue of a court order for payment (a simplified statement of claim). If the application is lodged correctly, the court issues an order for payment, without examining the validity of the claim. In this court order the debtor is required to settle the claim, plus interest and costs, within a period of two weeks, or to contest the claim within the same period.

If the creditor is resident outside Germany and the debtor is in Germany, the Schöneberg local court in Berlin has sole jurisdiction. Otherwise the procedure is the same as if both debtor and creditor were resident in Germany.

If the debtor contests the claim, the court issuing the order (the dunning court) passes the legal dispute on to the competent court for the case, in as much as one of the parties applies for the dispute to be settled.

If the debtor does not contest the claim, the court issues a writ of execution upon application, which also has to be officially delivered to the debtor. The debtor can also contest the writ of execution within two weeks.

If the debtor does not contest the writ of execution, the debtor then has an executory title and can collect the accounts receivable by way of debt enforcement.

### **Costs**

#### Court fees

The court charges fees for its actions in advance. These court costs are charged to the debtor together with the payment order. As long as the claim is justified and the debtor is not insolvent, the debtor must pay all the court costs. This means that the creditor is not liable for any court costs. An advance towards the court costs initially charged to the creditor is reimbursed when the overdue payment is made.

### Lawyer's fees

If you decide to apply for a court order using our online procedure, a legal firm becomes active on your behalf to obtain the order. You sign a proxy to authorise this law firm to act on your behalf.

Lawyer's fees are governed by statute and are staggered according to the amount in dispute – i.e. the payment you are claiming from the debtor.

However, just as with the court costs, the lawyer's fee is also charged to the debtor in the court order. Only the debtor is liable for these fees, which means that any advance fees you pay are reimbursed to you if your claim is justified and the debtor is insolvent.

If the debtor contests the court order for payment and the court case establishes that your claim is not justified, or if you discontinue the collection of your claim without the debtor having paid, you are liable for the lawyer's fees.

If the debtor is insolvent, you must initially pay the lawyer's fees, but you can claim these back from the debtor with interest for up to the next 30 years, as soon as the debtor becomes able to pay again.

### Further costs for a writ of execution

If the court order is followed by a writ of execution because the debtor remains in default despite receiving the court order, there are no further court fees.

However, an application for a writ must be submitted to the court in this case. If you choose to have Striegel & Kiau apply for a writ of execution, half of the lawyer's fee as calculated in the tables falls due.

### Mode of payment

We can only take on foreign mandates against prepayment. Therefore, once we have the signed proxy we will email you the invoice and apply for the court order upon its settlement.

### **Filling out the form**

You have decided to apply online for a court payment order against a debtor, for one or more overdue payments.

To do so, please enter the information required for a court order application on the form provided here.